THE DIVISION COURTS ACT

AND AMENDMENTS THERETO.

86
5020

COMPRISING R.S.O. (1887), CAP. 51; 51 VICT., CAP. 10; 52 VICT., CAP. 12; 55 VICT. CAP. 11; 56 VICT., CAP. 15; AND 57 VICT., CAP. 23, TOGETHER WITH

THE GENERAL RULES AND FORMS (1894)

FULLY ANNOTATED, WITH ADDITIONAL FORMS OF PROCEEDINGS APPLICABLE TO DIVISION COURTS.

Founded on and being a complete consolidation of the works of the late J. S. SINCLAIR, Esq., Q.C., on Division Court Law.

BY

JAMES BICKNELL

Of Osgoode Hall, Barrister-at-Law,

AND

EDWIN E. SEAGER

Joint Author of "A Concise Treatise on the Law of Landlord and Tenant," and "The Liquor License Act of Ontario."

VOLUME II.

CONTAINING THE RULES AND FORMS, THE ACTS OF 1893 AND 1894, AND AN APPENDIX OF THOSE SECTIONS OF OTHER STATUTES WHICH CONFER JURISDICTION ON DIVISION COURTS.

TORONTO:
THE GOODWIN LAW BOOK AND PUBLISHING COMPANY (LTD.)
1894.

KF
8816
Z B3
B5 v.2

Entered according to Act of the Parliament of Canada, in the year one thousand eight hundred and ninety-four, by JAMES BICKNELL and EDWIN ERNEST SEAGER, at the Department of .culture.

PREFACE TO VOLUME II.

IT was expected that the present volume would be issued shortly after the publication of Volume I.

The completion of the revision of the rules was delayed, however, until the present year, and in the meantime the engagements of the Editors had become such that they were thereafter unable to devote together that unremitting attention which they had found necessary in their production of Volume I. The present volume has been made as complete as possible. Besides annotating the rules, the Editors have prepared nearly one hundred additional forms of proceedings, which, they trust, will be found useful. It has always been difficult for practitioners living at a distance from counties in which suits had to be entered to ascertain the precise limits of the territorial jurisdiction of the Division Courts therein. No publication but the Annual Report of the Inspector of Division Courts has hitherto shown these boundaries. It is possible that changes are not made in the limits of Division Courts any oftener than amendments to the Act are enacted by the Legislature. The Editors have, therefore, set forth the present boundaries in this volume. An appendix has been inserted, containing those sections of Acts (other than The Division Courts Acts and their amendments, and the parts of Acts printed in the body of the work) from which the Division Courts derive jurisdiction. No collection of these sections has hitherto been made. A work on Division Courts would seem to be a proper medium for rescuing some of them from their present obscurity.

With regard to the rules and authorized forms, the Editors were, of course, unable to change their arrangement, or the headings of the various groups. The arrangement cannot be said to have attained perfection, and the best suggestion the Editors can make to the reader as to the headings of the groups is to disregard them, as otherwise he will likely be led into error.

The changes which have been wrought by the rules and by the amendments to the statutes since the publication of Volume I. have necessarily caused portions of this volume to be inconsistent with portions of Volume I. The earlier volume must, in such cases, give way to the present.

Toronto, October 15th, 1894.

TABLE OF CONTENTS OF VOLUME II.

	Page.
TIME OF OPERATION	1
INTERPRETATION	2
CLAIM AND PARTICULARS	7
PROCESS	9
SERVICE OF SUMMONS	11
SUBSTITUTIONAL SERVICE	12
SUMMONS FOR FLOODING LANDS	13
RENEWAL OF WRIT	14
AMENDMENTS	15
ABSCONDING DEBTORS	16
Only one execution to be issued	17
Costs	18
Plan of distribution	18
Order changing distribution	19
INTERPLEADER	19
Particulars of claim	20
Where damages claimed	22
Deposit of costs by creditor	23
Deposit of value by claimant	23
Order for sale	26
Sale where claimant makes no deposit	27
REPLEVIN	28
When goods repleviable	28
Order for writ	29
Practice in action on bond	32
When property secured in dwelling house	35
Bailiff's return	36
Withernam	37
Discharge of writ	38
Default of defence	39
Payment into court	39
Judgment	41
GARNISHEE PROCEEDINGS	41
Interveners	42
Controversy between debtor and garnishee	43
Payment into court by garnishee	46

Page.

DEFENCES IN GARNISHEE PROCEEDINGS 49
Proceedings under Consolidated Rules..... 51
PROCEEDINGS BY OR AGAINST EXECUTORS AND ADMINISTRATORS ... 54
DEFENCES AND CONFESSIONS 61
CONFESSION BEFORE ACTION..... 62
NOTICE OF ADMISSION OF PART..... 63
COUNTERCLAIM 64
Judgment where plaintiff does not appear..... 67
Where in excess of jurisdiction..... 68
JUDGMENTS AND EXECUTIONS..... 69
Special summons—several defendants..... 69
JUDGMENTS 73
Where defence only for part..... 75
Motion for judgment..... 75
CREDITORS' RELIEF ACT..... 76
REVIVING JUDGMENTS..... 80
CROSS-JUDGMENTS TO BE SET OFF 83
CLERKS' AND BAILIFFS' DUTIES..... 83
TRIAL LIST..... 88
TRIAL BY JURY..... 90
PROCEEDINGS IN TRANSFERRED CASES 90
POSTPONED JUDGMENT..... 91
NOTICE TO DEFENDANT OF PLAINTIFF PROCEEDING FOR REMAINDER OF CLAIM 94
NOTICE ON LEAVE GRANTED TO DEFEND 94
TENDER 95
TENDER OR PAYMENT INTO COURT..... 96
APPLICATION FOR NEW TRIAL 96
TAXATION OF COSTS 97
RETURNS 97
TRANSFER OF CASES TO HIGH COURT 99
BAILIFFS' DUTIES 100
JUDGMENT SUMMONS 107
WARRANTS OF COMMITMENT..... 108
PAYMENT ON ARREST 109
AMENDMENTS AND CHANGE OF PARTIES..... 110
WHERE A PERSON BROUGHT IN DOES NOT APPEAR AT TRIAL..... 117
CHANGE OF PARTIES BEFORE JUDGMENT 117
SUBSTITUTION OF DEFENDANT..... 119

	Page.
CHANGE OF PARTIES OR NEW CAPACITY	119
NOTICE OF ORDER THEREFOR	120
GENERAL RULES	121
Claims by or against husband and wife	121
Infants	122
Formal objections	123
Parties to leave address with clerk	124
Unauthorized forms and proceedings	125
Payment into court	126
Suitors moneys; how payable	128
Discontinuance of action	130
Abatement	131
Satisfaction of judgment	132
Detention, preservation, etc., of property	133
TEMPORARY JUDICIAL DISTRICTS	136
AFFIDAVITS AND OATHS	141
MARRIED WOMEN	145
TRIALS AND HEARINGS	147
LEAVE TO DISPUTE PLAINTIFF'S CLAIM	147
INSPECTION OF PROPERTY BY JUDGE	148
ADJOURNMENT OF SUIT	149
PUTTING OFF TRIAL	149
NEW TRIAL	154
INSPECTION OF DOCUMENTS	154
COUNSEL FEES	156
WITNESS FEES	158
STAYING PROCEEDINGS	160
SECURITY FOR COSTS	161
ALLOWANCE OF COSTS BY JUDGE	163
OFFICERS' FEES	163
SUMMARY RECOVERY OF CLERK'S FEES	165
POSTAGE AND REGISTRATION OF LETTERS	165
APPEALS FROM DIVISION COURTS	166
Under Master and Servant Act	167
Protection of Sheep Act	169
Consolidated Assessment Act	171
Line Fences Act	176
Ditches and Watercourses Act	179
FORMS	185
Tariffs of fees	185
Books	193

	Page
FORMS—*continued.*	
Particulars	202
Counterclaims	208
Affidavits and oaths	209
Garnishees	221
Summonses and warrants	222
Replevin	229
Garnishees	233
Minutes of judgment	238
Judgments in replevin	249
Detinue	250
Executions	251
Garnishee proceedings	256
Venditioni exponas	261
Master and servant	262
Warrants against witness	263
Judgment debtors	265
Interpleader	269
Examinations, new trials, references	273
Consents and agreements	279
Jurisdiction	280
Notices by clerk	281
Notices by parties	284
Certificates and orders of clerk and judge	287
Change of parties	289
Miscellaneous forms	291
Bailiff's forms	295
Appeals: Ditches and watercourses	298
Line fences	300
Master and servant	302
Industrial schools	304
ADDITIONAL FORMS: Particulars	307
Affidavits	309
Summonses and orders	315
Commission to take evidence	319
Orders	321
Notices, pleas, etc	326
Plan of distribution	332
Appeal bonds	335
Judgments	336
Warrants and executions	339
Injunctions	341
Certiorari, mandamus, prohibition	343
BOUNDARIES OF DIVISION COURTS	349
STATUTES AMENDING DIVISION COURTS ACT passed since publication of Volume I	375

	Page.
56 VICTORIA, CHAPTER 15	375
Jurisdiction extended	375
57 VICTORIA, CHAPTER 23	376
Renewal of clerk's and bailiff's covenants	377
Postponement of judgment	377
Jury fees to be costs in the cause	378
Execution against lands	379
Transcripts to County Courts abolished	380
Equitable execution against lands	381
County Court remedies applicable	383
Title of purchaser under execution	384
Forms of procedure book and foreign service book	384
Actions for less than $10	385
Service out of Ontario	387
Notice disputing jurisdiction	388
May sue in any Division Court	388
Proof of service out of Ontario	389
Service of summons on non-residents	389
Removal by certiorari	390
Garnishment of wages due unmarried persons	391
Examination of garnishee as judgment debtor	392
Form of procedure book	393
Form of foreign procedure book	394
Form of execution against lands	394
RULES OF THE HIGH COURT OF JUSTICE REFERRING TO DIVISION COURTS	395
Interpleader issue to be tried in Division Court	395
APPENDIX	399
OTHER ACTS APPLICABLE TO OR CONFERRING JURISDICTION ON DIVISION COURTS	399
R.S.O., CHAPTER 1	399
Recovery of penalties	399
R.S.O., CHAPTER 15	399
Securities by sheriffs, registrars, Division Court clerks	399
Affidavits of execution may be made before justice of the peace or commissioner	400
County Court and Division Court clerks, etc.	401
R.S.O., CHAPTER 35	401
Search for liquors allowable	401
Dwelling houses not to be searched	402
R.S.O., CHAPTER 126	402
Enforcement of mechanics' liens in Division and County Courts	402

Page.

53 VICTORIA, CHAPTER 37 403
When judgment for mechanics' lien to be entered in Division Courts 403
Fees for entering certificates 403
Action by one of several lienholders for joint benefit. 403

56 VICTORIA, CHAPTER 24—Wage-earners 404
Claims for wages to any amount may be prosecuted in Division Courts or County Courts 404
Powers of judges as to practice and procedure 405
Powers of city police magistrates 406

R.S.O., CHAPTER 227 407
An Act respecting Separate Schools—Division Courts. 407

54 VICTORIA, CHAPTER 55 408
An Act consolidating and revising the Public Schools Act—Division Courts 408

APPEALS FROM DIVISION COURT DECISIONS IN SCHOOL MATTERS .. 408
Minister may appeal to High Court 408
Proceedings in Division Courts when appeal decided 409

54 VICTORIA, CHAPTER 57—High Schools Act 410
Enforcing judgment against trustees 410

51 VICTORIA, CHAPTER 23—Desertion of Wives 410
Husband and wives may appeal to Division Court 410

54 VICTORIA, CHAPTER 22—Woodman's Lien 411
Enforcement of liens where claim does not exceed $200 411
Form of attachment 412
When attachment to issue from Division Court 413
Transfer of suit 414

55 VICTORIA, CHAPTER 30 414
An Act to consolidate the Acts respecting compensation to workmen in certain cases 414

57 VICTORIA, CHAPTER 26, 1894 415
Writs of execution not to be renewed 415
Division Court executions 415

Page.
..... 403
on Courts 403
..... 403
..... 403
..... 404
Division
... . 404
..... 405
..... 406
..... 407
..... 407
..... 408
Division
..... 408
ATTERS.. 408
... . 408
..... 409
..... 410
..... 410
.....
..... 410
..... 411
..... 411
..... 412
..... 413
..... 414
..... 414
o work-
..... 414
.....
.... 415
..... 415

Table showing References to Old Rules in Volume I., with Corresponding New Rules in Volume II.

NO. OF OLD RULE.	PAGE IN VOL. I.	SECTION.	NO. OF NEW RULE.	PAGE IN VOL. II.	SUBJECT.
2	3	6	2	2	Process.
118	3	6	Rescinded See new rule 239	124	Amendment. See new rules 4 and 26 and 207 *et seq.*
156	5	7	141	82	Revival of judgment.
159	29	35	247	128	Payment of suitors' moneys. See new rules 163-166.
9 to 17	36	44	8 to 19	9-12	Summonses.
15	37	44	13	10	Endorsement on summons.
90	42	51	183	100	Forfeiture of fees.
164	45	53	296	163	Fees.
97	45	54	164	93	Payment by bailiff of moneys made. See new rule 186.
41	83	72	41	29	Replevin.
13	83	72	45	31	Replevin, first process.
41 to 50	83	72	39 to 67	28-41	Replevin.
5	114	82	5	8	Entry of suit in ct. nearest deft's res.
123	115	83	22	13	Leave to sue in court adjacent to defendant's residence.
16	115	83	14	11	
133	119	86	262-269	141-4	Affidavits.
3, 4	127	94	3, 4	7-8	Particulars of claim.
100	128	94	197	106	Duty of clerk in preparing claim.
3 to 8	128	94	3 to 7	7-9	Requisites of claim and particulars.
31	148	109	123	72	Service of summons.
21 to 23	148	109	101,116, 117-120	61-69 70-71	Entry of judgment for part of claim.
22	148	109	116	69	Entry of judgment against one of several defendants.
23	148	109	117	70	
24 27 28	148	109	117 119 120	70 71 71	
18 to 34	148	109	16 to 19, 190,191, 104,101, 116-123	12 103-4 64, 61 69, 72	
149	148	109	125	73	Execution on judgment by default.
133	148	109	262-269	141-4	Affidavit of service.
31	150	109	123	72	Entry of judgment by default.
14	150	109	12	10	Date of alias summons.
133	151	110	262-269	141-4	Requisites of affidavits.
79	151	110	149	87	Special summons.
104	151	110	26	15	Amendment of summons.
36	154	111	28	16	Judgment in attachment.
118	155	111	239	124	Amendment.

Table showing References to Old Rules in Volume I., with corresponding New Rules in Volume II.—continued.

NO. OF OLD RULE.	PAGE IN VOL. I.	SECTION.	NO. OF NEW RULE.	PAGE IN VOL. II.	SUBJECT.
137	160	111	287	154	Production of documents.
122	164	114	275	147	Non-suit.
140	167	118	250	129	Adjournment.
139	169	118	280	149	Order for adjournment.
149	169	119	125	73	Time for enter'g judgt on adjudicat'n
87	175	122	Rescinded	..	Payment into court.
125	175	122	241	124	
129	175	123	244	126	Notice of payment into court.
125	175	123	241	124	Address to be left with clerk.
130	175	123	....	....	Payment out of money paid into ct.
45	178	125	61	39	Payment into court in replevin.
20	178	125	104	64	Paym't into ct. deemed notice of disp.
87	178	126	Rescinded	....	Form of notice.
125	178	126	241	124	Leaving address with clerk.
128	180	128	115	68	Statutory defence.
140	187	129	250	129	Adjournment.
134	194	133	269	144	As to forms of oaths.
133	208	143	262	141	Requisites of affidavits.
142	212	145	283	150	New trial.
144	212	145	293, 294	160-1	Setting aside or staying proceedings.
133, 134	215	147	262, 263	141	Affidavits.
155 to 158	220	148	139 *et seq*	80	Reviving judgment.
53 to 56	260	179	68 *et seq*	41	Garnishee proceedings.
90	260	179	183	100	Return of summons by bailiff.
58	263	180	79	46	Payment by garnishee.
57	264	181	78	46	Issue of garnishee sums. after judgt.
53 to 55	265	183	68 *et seq*	41	Garnishment.
56	270	187	76	45	Judgt. on default in garnishee proc.
58	274	189	79	46	Payment by garnishee.
61	275	191	....	....	Costs in garnishment.
53	276	193	74	44	Service of summons in garnishment.
133	276	193	262	141	Affidavits.
59	277	195	81	48	Aplcn. to discharge debt from atchmt.
131	288	205	102	62	Confession before action.
3	288	205	3	7	Claims, etc.
26	288	205	118	70	Judgment on confession.
24	288	205	117	70	Proceedings when some defendants dispute and others do not.
30	288	205	121	72	Costs on judgment on confession, etc.
95	291	209	163	93	Notice of recpt. of money on transc.
138	291	209	252	130	Discontinuance.
161 to 163	307	217	....	....	Transcript of judgment.
155 to 157	308	219	139 *et seq*	80	Reviving judgment.
158	309	220	143	82	Renewal of execution.
176	309	220	139 *et seq*	80	
160, 162	312	223	....	....	
160 to 163	312	224	....	....	Transcript of judgment.
161	313	224	....	....	
7	321	235	200	107	Judgment summons.

Table showing References to Old Rules in Volum I., with corresponding New Rules in Volume II.—continued.

NO. OF OLD RULE.	PAGE IN VOL. I.	SECTION.	NO. OF NEW RULE.	PAGE IN VOL. II.	SUBJECT.
85	322	235	Rescinded see 192	104	Judgment summons and service of.
90	322	235	183	100	Return of summons.
85	326	240	Rescinded	...	See n. r. 192—Judgment summons.
101	328	240	203, 204	108	Warrants of commitment.
35	338	249	27	16	Affidavit for attachment.
133	339	249	262 *et seq*	141	Affidavits.
7	339	249	200	107	Judgment summonses.
9	339	249	8	9	Process—Requisites of summonses.
35	339	249	27	16	Affidavit for attachment.
36	346	255	28	16	Several attachments.
8	346	256	7	9	Abandonment of excess.
35	347	256	27	16	Trial in attachment.
36	347	256	28	16	Several attachments.

TABLE OF CASES CITED

A

Abbot and Medcalf, *Re*, 383.
Abbott v. Richards, 26.
Adams v. Graham, 142.
v. Watson Manfg. Co., 114.
Aldrich v. Aldrich, 380.
Alexander v. School Trustees of Gloucester, 159
Allen v. Mathers, 149.
v. Taylor, 141.
v. Thompson, 142.
Ambergate Ry. Co. v. Midland Ry., 31.
American Concentrated Meat Co. v. Hendry, 35.
Anlaby v. Prætorius, 123.
Archbishop of Canterbury v. Robertson, 34.
Archibald v. Hubley, 17.
Armstrong v. Toronto Ry. Co., 156.
Ashcroft, *Re*, 142.
Attenborough v. Thompson, 142.
Attorney-General v. Corporation of Birmingham, 114.
Austin v. Mills, 380.
Avery v. Bowden, 147.
Ayscough v. Bullar, 110.

B

Badische Anilin und Soda Fabrick v. Levinstein, 134.
Bailey v. Bailey, 380.
Bain v. McIntyre, 5.
Baines v. Bromley, 65.
Bank of British North America v. Hughes, 11.
Bank of British North America v. Mallory, 54.
Bank of Hamilton v. Stark, 149.
Barker v. Palmer, 15.
Barlow v. Bailey, 134.
Bartholomew v. Freeman, 26.
Beales v. Tennant, 142.
Beaty v. Cromwell, 388.
Beddington v. Beddington, 389.
Berkeley v. Elkerkin, 380.
v. Hardy, 48.
Berlin Piano Co. v. Truaisch, 25.
Berry v. Donovan, 135.
Beswick v. Boffey, 21.
Betts v. Grand Trunk Ry. Co., 156.
Beverley v. Barlow, 7.
Bidder v. Bridges, 133, 143.
Blackwell v. England, 142.
Bland v. Rivers, 67.
Boden v. Roscoe, 31.
Boice v. O'Loane, 162.
Borthwick v. Ravenscroft, 7.
Bos v. Helsham, 26.
Boughton v. Citizens' Ins. Co., 155.
Bracken, *Re*, 60.
Bradley v. McIntosh, 156.
Bready v. Robertson, 162.
Brethour v. Brooke, 25.
Brice v. Munro, 81.
Briggs v. Boss, 142.
Brock District Council v. Bowen, 34.
Broderick v. Scale, 142.
Brown v. Porter, 149.
v. Watkins, 134.
Browne v. Smith, 7.
Bryce v. Kinnee, 20.
Buckley v. Barber, 5.
Buell v. Whitney, 34.
Bunch v. Kennington, 30.
Burn v. Bletcher, 388.
Burrowes, *Re*, 142.
Bustros v. White, 155.
Button v. O'Neil, 142.

C

Cairns v. Airth, 15.
Cameron v. Allen, 138.
Canadian Bank of Commerce v. Middleton, 162.
Canadian Bank of Commerce v. Jenkins, 133.
Canadian Pacific Co. v. Grant, 65.
Securities Co. v Prentiss, 65.
Capin v. Adamson, 388.
Carter v. Clarkson, 114.
v. Smith, 123.
Chamberlain v. Chamberlin, 64.
Chamberlen v. Clark, 54.

Churchward v. Coleman, 21
Clark v. St. Catharines, 162.
Clarke and Chamberlain, *Re*, 7.
Cleveland Press v. Fleming, 9.
Clowes v. Hilliard, 110.
Cobbett v. Field, 160.
Coffey v. Scane, 17.
Colley v. Richards, 155.
Collins v. Collins, 26.
Commercial Bank v. Watson, 383.
Conmee v. C.P.R., 161.
Connell v. C.P.R., 161.
Cookney v. Anderson, 389.
Copin v. Adamson, 388.
Corporation of the Township of Beverley v. Barlow, 7.
Corsellis, *Re*, 5.
County of Essex v. Wright, 161.
Wentworth v. Smith, 42.
Cousins v. Paddon, 56.
Cowan v. White, 33.
Cramar v. Matthews, 27.
Cressfield v. Such, 127.
Cropper v. Smith, 8.
Curlewis v. Clark, 133.
Cutler v. Morse, 64.

D

Daniel v. Janes, 31.
v. Metropolitan Ry. Co., 147.
Darling v. Smith, 19.
Dartnell v. Quarter Sessions of Prescott and Russell, 185.
Davey v. Baines, 133.
Davidson and Chairman Quarter Sessions of Waterloo, *Re*, 2[illegible]
Davis v. Andrews, 82.
v. Flagstaff Silver Mining Co., 74
v. Fletcher, 109.
Davison v. Breson, 123.
Dawdy, *Re*, 26.
Dawie v. Parth, 25.
Dawkins v. Lord Rokeby, 160.
Day v. McLea, 133.
Deal v. Potter, 37.
De Forrest v. Bunnell, 142.
Delaney v. MacLellan, 162.
De Lati v. Braham, 134.
Derbon, *Re*, 123
Direct U.S. Co. v. Dominion Telegraph Co., 148.
Dominion L. & S. Co. v. Kilroy, 20.
Donelly v. Stewart, 380.
Doner v. Ross, 54.
Doran v. Toronto Suspender Co., 20.
Dowie v. Partlo, 25.
Doyle v. Kaufman, 15.
Ducket v. Gover, 110.
Duggan v. Kitson, 5.
Duncan v. Tees, 20.
Dyke v. Stephens, 5.

E

Eden v. Naish, 161.
v. Weardale Co., 6.
Edgar v. Magee, 10.
Edwards v. English, 20.
Elliot v. Biette, *Re*, 9, 376.
Elmsley v. Cosgrave, 142.
Emden v. Carte, 110.
Erving v. Peters, 56.
Essex v. Wright, 161.
Ethersay v. Jackson, 33.

F

Fee v. McIlhargey, 123, 152.
Field v. Adames, 30.
Firth v. Bush, 15.
Fletcher v. Noble, 161.
Foakes v. Beer, 133.
Foley v. Morran, *Re*, 67.
Forbes v. Michigan Central Railway Co., 92, 132, 147, 162.
Fournier v. Hogarth, 162.
Fox v. Symington, 24.
v. Williamson, 170.
France v. Dutton, 14.
Fraser v. Fothergill, 21.

G

Gardner v. Irvin, 155.
Gaudet, *Re*, 161.
Gaulard and Gibbs' Patent, *Re*, 8.
Gebruder Naf v. Ploton, 67.
Gibbs v. Cruickshank, 39.
Giblin v. McMullen, 147.
Gilchrist v. Conger, 38.
Gildersleeve v. Balfour, 114.
Gilmour v. Magee, 15.
Goddard v. O'Brien, 133.
Goodman v. Blake, 24, 26.
Goold v. Rich, 381.
Gough v. Bench, 8.
Graham v. Nelson, 5.
v. O'Callaghan, 37.
Grant v. McDonald, 5.
v. Shaw, 142.
Gray v. Jones, 142.
Great Western Ry. Co. v. McEwan, 36.
Green v. Duckett, 31.
v. Minnes, 72.
Gujen v. Sampson, 142.

Gullivar v. Cozens, 31.
Guy v. Grand Trunk Railway Co., *Re*, 388.

H

Haacke v. Gordon, 5.
Haddow v. Morton, 25.
Hanna v. Coulson, 392.
Hannan v. Mochett, 30.
Hanrot v. Evans, 92.
Hatchard v. Mege, 117.
Hatton v. Harris, 34.
Hayward v. Haswell, 41.
Heley v. Cousins, 37.
Henderson v. Hall, 389.
v. Preston, 103.
v. Royal British Bank, 81.
Hennessy v. Rohman, 134.
Hestop v. McGeorge, 21.
Hibbitt v. Schilbroth, 15.
Hill v. Walker, 54.
Hind v. Brett, 148.
Hodgson v. Graham, 391.
Hogaboom v. Grundy, 20.
Holland v. Wallace, 112.
Holtby v. Hodgson, 146.
Hooman, *Ex parte*, 142.
Hoorigan v. Driscoll, 31, 32, 36.
Hooson, *Ex parte*, 135.
Hotchard v. Medge, 117.
Howard, *Re*, 142.
Howell v. Jerrett, 148.
Howland v. Dominion Bank, 15.
Hughes v. Field, 19.
v. Rees, 148.
Humfray v. Rigby, 34.
Huntingdon v. Attrill, 148.
Husband, *Re*, 142.
Hutchinson v. Birch, 35.
v. Hartmont, 135.
Hyde v. Warden, 134.
Hyman v. Helm, 148.
Hynes v. Fisher, 61.

I

Ibbotson v. Henry, 31.
Ingram v. Little, 5.
Institute of Patent Agents v. Lockwood, 378, 395.
Irving v. Clark, 162.
Isaac v. Wyld, 9.
Ives v. Hitchcock, 31.

J

Jackson v. Metropolitan Ry. Co., 147.
Jamieson v. Laing, 161.
Jenkins v. Kirby, 82.
Jones v. Cook, 31, 32.
v. Miller, 115.
Johnson v. Bennett, 381.
v. Burgess, 61.
v. Leigh, 35.
v. Therien, *Re*, 51.
Johnston v. Grand Trunk Ry., 161.

K

Kearsley v. Phillips, 156.
Keena v. O'Hara, 6.
Keer v. Styles, 381.
Kendall v. Hamilton, 114.
Kennedy v. Lyell, 156.
v. Patterson, 26.
Kennin v. McDonald, 32.
Kerbey v. Denbey, 35.
Kettlewell v. Barstow, 156.
Kloebe, *Re*, 55.
Knight v. Bennett, 41.
v. Medora, 388.
Knox v. Porter, 149.

L

Langstaffe, *Re*, 144.
Larchin v. North-Western Deposit Bank, 142.
Latour v. Smith, 159.
Lawford v. Partridge, 391.
Lawless v. Radford, 32.
Lawrance v. Beaumont, 134.
Lee v. Turner, 142.
Leider v. Phys, 127.
Levy, *Re*, 142.
Lewis v. Earl of Londesborough, 134.
v. Old, 153, 378.
v. Teale, 37.
v. Thorne, *Re*, 383.
Lince v. Faircloth, 56.
Lister v. Northern Railway Co., 26.
London and Yorkshire Bank v. Cooper, 156.
Long v. Clarke, 35.
Lumb v. Beaumont, 134.
Lydall v. Martinson, 114.

M

Macdonald v. Carrington, 61.
Macdougall v. Knight, 160.
Mara v. Quin, 57.
Martin v. Corporation of Haldimand, 189.
Mason, *Re*, 156.
Mason v. Cameron, 60.
v. Johnson, 133.
v. Peterboro, 117, 118.
Mead v. Creary, 43, 388.

Merchants' Bank v. Monteith, 5.
National Bank of Chicago v. Ontario Coal Co., 72.
Meredith v. Alleyn, 33.
Metropolitan Bank v. Pooley, 160.
Midgley v. Midgley, 54.
Milne v. Moore, 55.
Mitchell v. Darley Main Colliery Co, 135.
Moore v. Connecticut Mutual Life Ins. Co. of Hartford, 147.
v. Wallace, *Re*, 46.
Morewood v. South Yorkshire Railway Co., 142.
Morrow v. Canadian Pacific Railway Co., 147.
Morse v. Phinney, 17.
Mountford v. Gibson, 5.
Munn v. McConnell, 134.
Mutrie v. Binney, 148.
Myers v. London & S.W. Ry. Co., 189.

Mc

McArthur v. Michigan Central Railway Co., 25.
McDade d O'Connor v. Dafoe, 5.
McDonald v. McMillan, 149.
McFee, *Ex parte*, 21.
McGowan v. Middleton, 66.
McGregor v. Norton, *Re*, 127.
McHenry v. Lewis, 148.
McKenzie v. Ryan, *Re*, 9.
McKibbon v. Feegan, 57.
McLean v. Shields, 388.
McLeish v. Howard, 128.
McMahon v. Ingersoll, 34.
v. Spencer, 82.
McPherson v. Fourester, 380.

N

New Brewery Co. v. Hammah, 110.
Newby v. Sharpe, 8.
Newman v. Merriman, 190.
Newton v. Sherry, 60.
Niagara Grape Co. v. Nellis, 161.
Nisbet v. Cock, 142.
Nobels Explosives Co. v. Jones, 114.
Nouvion v. Freeman, 380.

O

O'Shea v. Wood, 155.

P

Pacaud v. McEwan, 32.
Padget v. Priest, 5.
Parke v. Clarke, 164.
v. Willock, 63.
Parker v. Odette, 42.
Patrick v. Shedden, 380.
Peer v. Northwest Transportation Co., 25.
Peruvian Guano Co. v. Bocknoldt, 148.
Peterkin v. McFarlane, 8.
Peters v. Stoness, 381.
Petty v. Daniel, 123.
Phillips v. Fox, 81.
v. Jones, 127.
Phosphate Sewage Co. v. Hartmont, 135.
Pilley v. Robinson, 114.
Polini v. Gray, 134.
Postlethwaite, *Re*, 156.
Pratt v. Rutledge, 41.
Price v. Harwood, 7.
v. Wade, 82.
Prittie v. Crawford, *Re*, 381.

R

R. v. Chilton, 21.
v. County Court Judge of Essex, 380.
v. County Court Judge of Halifax, 134.
v. Court of Revision of Cornwall, 15.
v. Cowper, 14.
v. Cox, 156.
v. De Winton, 92.
v. Evans, 92.
v. Highman, 92.
v. Lee, 92.
v. Ludmore, 191.
v. Richards, 21.
v. Stapleton, 21.
v. Tugwell, 142.
v. Worthenburry (Inhabitants), 7.
Rainy Lake Lumber Co., *Re*, 162.
Ramsay v. Margrett, 20.
Randall v. Burton, 34.
v. Lithgow, 48.
Ratcliffe v. Burton, 35.
Ratcliffe v. Evans, 117.
Rees v. Morgan, 40.
Reid v. Gowans, 26.
v. Macdonald, 20.
v. Murphy, 24, 26.
Richards v. Cullerne, 135.
Richardson v. Wright, 21.
Roberts v. Donovan, 135.
v. Great Northern Ry. Co., 25.
Ross v. Edwards, 160.
v. Gandell, 7.
v. McLay, 185.
Rownson, *Re*, 54.
Rumohr v. Marks, 63.
Ryder v. Wombwell, 147.

S

Samis v. O. Ireland, 381.
Schilbsby v. Westenholz, 388.
Schultz v. Wood, 149.
Scott v. Morley, 146.
Searle v. Matthews, 24.
Sears v. Meyers, 388.
Semaynes' Case, 35.
Sharp v. Brown, 142.
Shaw v. Smith, 134.
Sheape v. Cullpepper, 40.
Sheehan v. Great Eastern Ry. Co., 114.
Sibree v. Tripp, 133.
Simmons v. Woodward, 142.
Singleton v. Williamson, 31.
Smalpage v. Tonge, 15.
Smith v. Antipitzky, 191.
v. Broadbent, 189.
v. Cheese, 142.
v. Critchfield, 20.
v. Silverthorn, 162.
v. Williams, 31.
Soda Fabrick v. Levinstein, 134.
Southwick v. Hare, 72, 162.
St. Louis v. O'Callaghan, 15.
Stackwood v. Dunn, 150.
Stahlsmidt v. Lett, 54.
Standard Discount Co. v. LaGrange, 6.
Steuart v. Gladstone, 149.
Steward v. North Metropolitan Tramways Co., 8.
Steward v. Young, 147.
Stewart v. Sullivan, 161.
Stoeser v. Springer, 36.
Strelle v. Pearson, 134.
Sturgis, *Re*, 162.
Sykes v. Sacerdoti, 162.

T

Talbot v. Hodson, 33.
Tanner, *Ex parte*, 21.
Taylor v. Bradford, 161.
v. Brodie, 54.
v. Eckersley, 134, 135.
v. Holman, 57.
v. Smith, 147.
v. Wood, 5.
Tetley v. Griffith, 146.
Thomas v. Peek, 190.
Thompson, *Re*, 162.
v. Great Western Ry. Co., 161.
Thomson v. Harding, 5.
Thwaites v. Wilding, 20.
Tildseley v. Harper, 110.
Tinning v. Bingham, 140.
Tomlinson v. Goatley, 15.
Tomlinson v. Land Finance Corporation, 162.
Toplis v. Grane, 150.
Totten, *Re*, 185.
Toulmin v. Bowditch, 7.
Trimble v. Miller, *Re*, 9.
Trufort, *Re*, 8.
Trust and Investment Corporation of South Africa, *Re*, 11.
Turner v. Imperial Bank of Canada, *Re*, 138.
Turquand v. Fearon, 110, 111.
Tuther v. Caralampi, 34.
Tuton v. Sanoner, 142.

V

Vaughan Road Co. v. Fisher, 161.
Vinall v. De Pass, 53.
Vines v. Arnold, 9.

W

Walker v. Olding, 26.
Walker & Co. v. Parkins, 7.
Wallace v. Souther, 7.
Warmer v. Biggs, 30.
Warrener v. Kingsmill, 388.
Watt v. Clark, 161.
Webb v. East, 156.
v. James, 34.
Webber v. Wedgwood, 8.
Weldon v. Neal, 8.
Wentworth v. Smith, 42.
Whidden v. Jackson, 10, 138, 375.
White v. Cuyler, 48.
v. Galbraith, 9.
Whitfield v. South-Eastern Ry. Co., 72.
Whitehead v. Proctor, 21.
Williams v. Bryant, 7.
v. Crow, 34, 41.
v. Township of Raleigh, 161.
Wilson v. Ann, 145.
Wilson v. Balcarre, 114.
Winfield v. Fowlie, 20.
Winger v. Sibbald, 9.
Wood v. Leatham, 381.
v. Weightman, 60.
Woodward v. Shields, 110.
Wooster Coal Co. v. Nelson, 72.
Wormer v. Biggs, 30.
Wrathwell v. Bates, 5.
Wright v. Wright, 161.

Y

Young, *Re*, 49.
v. Brassey, 142.
v. Higgon, 11.
v. Morden, *Re*, 376.
v. Purves, 5.

CERTIFICATE OF ADOPTION OF RULES.

WE, the undersigned, Stephen James Jones, David John Hughes, Edmund John Senkler, Herbert Stone McDonald, and William Warren Dean, being the Board of County Judges appointed and authorized under the 298th section of *The Division Courts Act* to frame General Rules and Forms concerning the practice and proceedings of the Division Courts in the Province of Ontario, and the execution of the process of such Courts; with power also to frame Rules and Orders in relation to the provisions of the said *Division Courts Act*, and of any future or subsequent Act respecting such Courts as to which doubts have arisen, or may arise, or as to which there have been or may be conflicting decisions in any of such Courts, have, by virtue of the powers vested in us thereby and of all other powers enabling us in this behalf, framed the following Rules and Orders, and do hereby certify the same under our hands to the President of the High Court, to be by him submitted to the Judges of the High Court, according to law.

Dated this 26th day of January, A.D. 1894.

S. J. JONES,
County Judge, Brant.

D. J. HUGHES,
County Judge, Elgin.

E. J. SENKLER,
County Judge, Lincoln.

H. S. MCDONALD,
County Judge, Leeds and Grenville.

W. W. DEAN,
County Judge, Victoria.

Approved, 27th January, 1894.

J. A. BOYD, C.
THOMAS GALT, C.J., C.P.D.
THOMAS FERGUSON, J.
JOHN E. ROSE, J.
HUGH MACMAHON, J.

REVISED RULES, ORDERS, AND FORMS

—OF THE—

DIVISION COURTS

—OF THE—

PROVINCE OF ONTARIO

Adopted by the Board of County Judges on the 26th January, A.D. 1894, and approved by the Judges of the High Court, 27th January, A.D. 1894.

RULES.

TIME OF OPERATION.

Rule 1

1. The Rules of practice and the Forms now in use in the several Division Courts shall, on and from the first day of July, A.D. 1894, cease to be used, and in lieu thereof the following shall, on and from such day, be the Rules, Orders, and Forms in force and used in said Courts. But any action, process, order, judgment, or proceeding pending, existing, or in force in any Division Court at that time shall not be thereby affected, but shall continue and remain, and, so far as necessary, be proceeded with under these Rules and Forms, if applicable, or otherwise under the Rules and Forms hitherto in use, or as the Judge may direct.

Be proceeded with under these rules.—The rules govern all future proceedings; to pending proceedings they apply so far as applicable. *See* vol. 1, p. 392.

Rule 2

INTERPRETATION.

2. In construing these Rules and Forms, unless otherwise declared or indicated by the context, the following words shall have the several meanings hereby assigned to them over and above their several ordinary meanings, viz. :—

(1) The word "Act" shall mean The Division Courts' Act (Revised Statutes of Ontario, chapter 51) and any amending Act or Acts.

(2) The word "party" shall mean a party to a suit or proceeding, *and shall include every person served with notice of or attending any proceeding, although not named in the summons or particulars of claim.*

(3) The word "person" shall include any body corporate or politic, *or party, and the heirs, executors, administrators, or other legal representatives of such person, to whom the context may apply according to law.*

(4) The word "executor" shall be held to embrace and mean "of the last will and testament," and shall extend to a party acting as such of his own wrong, and the word "administrator" shall be held to embrace and mean "of the property of," etc.

(5) Words importing the singular number, or the masculine gender only, shall include more persons, parties, or things of the same kind than one, and females as well as males, and the converse.

(6) The word "oath" shall be construed as meaning a solemn affirmation, or statutory declaration, whenever the context applies to any person and case by whom and in which a solemn affirmation or statutory declaration may be made instead of an oath, and in like cases the word "sworn" shall include the words "affirmed" and "declared."

Rule 2

(7) The words "Home Court" and "Home Division" shall mean respectively the Court and Division from which process originally issued.

(8) The words "Foreign Court" and "Foreign Division" shall mean respectively the Court and Division into which process is issued from another Court.

(9) The words "Judge," "Clerk," and "Bailiff" shall be taken to extend and apply to the junior, deputy, or acting Judge, or deputy or acting Clerk, or deputy or acting Bailiff (as the case may be or may require).

(10) "Plaintiff" shall include every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.

(11) "Petitioner" shall include every person making any application to the Court or Judge either by petition, motion, or summons, otherwise than as against any defendant.

(12) "Defendant" shall include every person served with any writ of summons or process, or served with a notice of or entitled to attend any proceedings.

(13) The word "county" shall include two or more counties united for judicial purposes, *or for purposes to which an enactment relates.*

(14) The words "the claim" shall mean the demand, or the subject-matter for which any suit or proceeding is brought or instituted in a Division Court.

(15) The word "process" shall mean any summons, writ, or warrant issued under the seal of the Court, or a Judge's summons or order.

(16) "Court" means the Division Court having jurisdiction in the action, matter, or proceeding.

Rule 2

(17) "Clear days" means that in all cases in which any particular number of days is prescribed for the doing of any act, or for any other purpose, the same is to be reckoned exclusive both of the first and of the last day.

(18) "Judgment" means the final decision of the Court or Judge in any action, or the entering of final judgment by the Clerk, when a claim is not disputed, as provided by section 109 of the Act.

(19) "Order" means the final decision of the Court or Judge in any matter, and also any decision of the Court or Judge other than final in any action or matter.

(20) "Security covenant" means the covenant required to be furnished by a Clerk or Bailiff of a Division Court, in pursuance of any statute requiring security from any such officer.

(21) "Goods, chattels, and property" mean goods, chattels, cattle, sheep, or other animals or property, money, money's worth and effects seized or seizable in execution or upon an attachment, or which may be distrained or made exigible to the satisfaction of a judgment in the Division Court.

(22) For the purposes of section 101 of the Act, the word "agent" shall be held to include :—

(a) In case of a railway company, a station-master having charge of a station belonging to the railway company.

(b) In the case of a telegraph company, a person having charge of a telegraph office belonging to the telegraph company; and

(c) In the case of an express company, a person having charge of an express office belonging to the express company.

(23) Otherwise than as hereinbefore provided for, *The Interpretation Act of Ontario* and the interpretation clauses of *The Judicature Act* shall apply to these Rules and Forms, unless there be anything on the subject or context repugnant thereto. Rule 2

(24) The word "folio" shall mean one hundred words.

The words in italics in sub-sections 2, 3, and 13 are new.

Sub-sections 1, 4, 5, 6, 7, 8, 9, 14, and 15 are substantially the same as before. In the old rules it was provided that the words "plaintiff" and "defendant," respectively, should be mutually transposed where necessary for the proper application and construction of any of the rules or forms, or for giving effect thereto. Sub-sections 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, and 24 are new.

Party.—The change in this rule is taken from the Judicature Act, section 2, sub-section 8. *See* also English Judicature Act, 1873, section 100; English County Court Rules (1888), 186.

A next friend is not a party: *Re* Corsellis, 31 W.R. 414; Dyke v. Stephens, 30 Ch.D. 189; Taylor v. Wood, 14 P.R. 449; nor a guardian *ad litem*: Ingram v. Little, 11 Q.B.D. 251.

A third party would be within the meaning of the rule. A holder of a mechanics' lien, notified to come in and prove his claim under R.S.O., c. 126, s. 28, would also be within it.

Person.—The rule adopts the interpretation of this word when occurring in a statute. *See* Interpretation Act, section 8, sub-section 13. Its application to rules of procedure is not easily seen.

Executor of his own wrong.—If one who is neither executor nor administrator intermeddles with the goods of the deceased, or does any other act characteristic of the office of executor, he thereby makes himself what is called in the law an executor of his own wrong, or, more usually, an excutor *de son tort*. Williams on Executors, 9th ed., 208.

The question whether a party has made himself an executor *de son tort* is one of mixed law and fact. The jury find the facts, and the court says whether those facts constitute an executorship: Padget v. Priest, 2 T.R. 97, 1 R.R. 440; Haacke v. Gordon, 6 U.C.R. 424.

A person who takes goods of a deceased under a fair claim of title is not an executor *de son tort*: Merchants Bank v. Monteith, 10 P.R. 467.

An executor *de son tort* cannot give a new start to the Statute of Limitations: Grant v. McDonald, 8 Gr. 478. Lands cannot be sold under a judgment against such an executor: McDade d. O'Connor v. Dafoe, 15 U.C.R. 386; Wrathwell v. Bates, 15 U.C.R. 391; Graham v. Nelson, 6 C.P. 280; but leaseholds may be sold: Bain v. McIntyre, 17 C.P. 500, though not under a Division Court execution: Duggan v. Kitson, 20 U.C.R. 316.

A purchaser of goods from an executor *de son tort* is not subject to the liability of such an executor: Merchants Bank v. Monteith, 10 P.R. 467; but the seller must be really acting as executor, and the party with whom he deals must have fair reason for supposing he has authority to act as such: Mountford v. Gibson, 4 East 411, 7 R.R. 599; Thomson v. Harding, 2 E. & B. 630; Buckley v. Barber, 6 Ex. 164.

An infant is not liable for a devastavit as an executor *de son tort*: Young v. Purves, 11 O.R. 597.

Rule 2 An action may be revived against the executor *de son tort* of a defendant : Keena v. O'Hara, 16 C.P. 435.

Oath.—A statutory declaration under any Act in force in Ontario may be made before a commissioner for taking affidavits, 53 Vict., c. 22.

The Canada Evidence Act, 1893, 56 Vict., c. 31, s. 26, requires such a declaration to conclude as follows : "And I make this solemn declaration, conscientiously believing it to be true, and knowing it to be of the same force and effect as if made under oath, and by virtue of The Canada Evidence Act, 1893"; and authorizes the making thereof before any judge, notary public, justice of the peace, police or stipendiary magistrate, recorder, mayor, commissioner authorized to take affidavits to be used either in the Provincial or Dominion courts, or any other functionary authorized by law to administer an oath in any matter.

Plaintiff.—A party taking out a summons to enforce a mechanics' lien proceeding would be a plaintiff. The definition is taken from R.S.O., c. 44, s. 2, s-s. 5.

Petitioner.—It is difficult to see in what matters application would be made to a Division Court by petition. The term is not used in any of the rules.

Defendant.—Taken from Judicature Act, R.S.O., c. 44, s. 2, s-s. 7. A third party is not a defendant : Eden v. Weardale Co., (1) 28 Ch.D. 333.

Clear Days.—Same, substantially, as C.R. 475. If a notice has to be given a certain number of clear days before an event, it appears that if sent by post it ought to be sent so that the number of clear days may elapse after the receipt of the notice, irrespective of the day on which, in the ordinary course of post, it would be received.

Judgment.—It will be noticed that judgment means only a final judgment. "No order, judgment, or other proceeding can be final which does not at once affect the status of the parties for whichever side the decision may be given ; so that if it is given for the plaintiff, it is conclusive against the defendant, and, if it is given for the defendant, it is conclusive against the plaintiff": *per* Brett, L.J., Standard Discount Co. v. La Grange, 3 C.P.D. 71.

Order.—An order in a mechanics' lien proceeding directing a sale would be interlocutory ; an order distributing the money realized would be final.

Goods, chattels, etc.—Compare the provisions of The Execution Act, R.S.O., c. 64, ss. 9, 16, and 17, and *see* vol. 1, pp. 294, 295, 296, 314, 315, 316.

Agent.—This is but a repetition of section 101 of The Division Courts' Act : *see* vol. 1, p. 137.

Interpretation.—The Interpretation Act is made applicable to the rules in the same manner as if they were statutes.

The interpretation clause of the Judicature Act is R.S.O., c. 44, s. 2, and the other words there interpreted are "cause," "action," "matter," and "pleading," as follows :—

Cause shall include any action, suit, or other original proceeding between a plaintiff and a defendant.

Action shall include suit, and shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of court.

Matter shall include every proceeding in the court not in a cause.

Pleading shall include any petition or summons, and shall include the statement in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counterclaim of a defendant.

CLAIM AND PARTICULARS. Rule 3

3. Every claim should show the names in full, and the present or last known place of abode of the parties, and must be legible, and delivered to the Clerk at his office. But if the plaintiff is not acquainted with the defendant's name in full, he may describe him by his surname, or by his surname and the initial letters of his christian name, or by such name as he is generally known by. The defendant shall, in the process, be described as he is in the claim, and such description may be taken to be valid, and all subsequent proceedings may be taken and had in conformity with such description; provided that the Judge may, upon application of any party, and upon such terms as he may deem just, make any amendment as to such name or description.

This rule is subject to the provisions of the Act in case of co-partners.

See sections 94 and 95 and notes thereto: vol. 1, pp. 127, 128, and 129; *see* also rule 150, *infra.*

Names in full.—*See* notes to section 64, vol. 1, p. 52.

The christian and surname of the plaintiff, or of each of the plaintiffs, if more than one, should be inserted in the summons: Arch. Pract., 12th ed., 187; Walker & Co. v. Parkins, 2 D. & L. 982. A note payable to John Souther & Son was held to be properly sued upon by John Souther & Co., on evidence that they were the persons designated: Wallace v. Souther, 16 S.C.R. 717. The summons should, in general, set forth the true christian and surname of the defendant in full. He may be sued by any name or names he may have acquired by usage or reputation, and this applies both to his christian and surname: Arch. Pract., 186; Williams v. Bryant, 5 M. & W. 447; Browne v. Smith, 1 P.R. 347; The Corporation of the Township of Beverley v. Barlow, 10 C.P. 178; Reg. v. Worthenbury (Inhabitants), 7 Q.B. 555; Price v. Harwood, 3 Camp. 108; Borthwick v. Ravenscroft, 5 M. & W. 31; *Re* Clarke and Chamberlain, 13 O.R. 270.

Present or last known place of abode.—As to residence, *see* notes to section 81, vol. 1, pp. 111, 112.

As to last place of abode, *see* notes to section 264.

"A reasonable degree of certainty in the description of the defendant's residence, etc., should be used and will suffice. . . . . The insertion of the supposed residence will suffice": Arch. Pract., 186, 187. A defendant described as of "Clapham, in the County of Surrey," was held sufficient: Toulmin v. Bowditch, 11 Jur. 455. A description of either plaintiff or defendant by local municipality and county would be sufficient: *see* Har. C.L.P. Act, p. 3, or notes. The omission of the place of abode would be an irregularity merely that could be waived: Ross v. Gandell, 7 C.B. 766, or amended under the wide power of amendment given by the rule.

The power of amendment given by this rule is expressed in wider terms than the old rule.

Rules 4-5

4. The claim shall contain a statement of the particulars thereof, or of the facts constituting the cause of action, and of the sum or sums of money claimed in respect thereof. Such particulars shall be framed in ordinary and concise language. The Judge may, on such terms as he may deem just, permit or require such statement to be amended, or further or other particulars to be furnished.

Contain a statement of the particulars thereof.—The particulars of claim, the facts constituting the cause of action, and the amount claimed, must be set forth: *see* notes to sections 94 and 95, vol. 1, pp. 127, 129, and notes to section 109, vol. 1, p. 148.

Unless particulars with reasonable certainty and detail are given, judgment by default cannot be signed under section 109.

It is only where detailed particulars of claim have been personally served that judgment may be given for default at the trial without further proof: *see* section 117, vol. 1, p. 166.

In all cases power to amend should be given on proper terms: Peterkin v. McFarlane, 9 A.R. 429; *Re* Trufort, 34 W.R. 56.

If all the evidence which can throw light upon a case has been given, it is a mere matter of form to adapt the particulars to the matters proved: Gough v. Bench, 6 O.R. 699.

"There is no kind of error or mistake which, if not fraudulent, or intended to overreach, the court ought not to correct, if it can be done without injustice to the opposite party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favor, or of grace": *per* Bowen, L.J., Cropper v. Smith, 26 Ch.D., at p. 710.

But, if the defendant cannot be compensated in costs, leave should not be given: *Re* Gaulard and Gibb's Patent, 57 L.J. Ch. 209.

And, where parties cannot be placed in the same position as if the claim had been correct in the first instance, leave should be refused: Steward v. North Metropolitan Tramways Co., 16 Q.B.D. 556, as where the amendment would deprive the defendant of the defence of the Statute of Limitations: Weldon v. Neal, 19 Q.B.D. 394.

The court may refuse to allow an amendment, raising an entirely new case: Newby v. Sharpe, 8 Ch.D. 39; and an amendment will not be allowed for the sole purpose of determining how the costs of the action shall be awarded: Webber v. Wedgwood, W.N. (1883) 8.

5. In any suit brought under the provisions of the 82nd section of the Act, the claim shall contain a statement (Form No. 17), or to the like effect.

The 82nd section of the Act allows an action to be brought in the court nearest the defendant's residence: *see* vol. 1, p. 114.

See also rules 14 and 22.

6. In actions in a Division Court, against officers and their sureties, on the officers' security covenant, the claim shall be as in Form No. 18, and the proceedings shall be the same as in ordinary cases. Rules 6-8

See notes to sections 35-39, vol. 1, pp. 26-33.

7. Where the excess is abandoned, it shall be done in the first instance, and in the claim. *Where such has not been done, the Judge may, upon such terms as he shall see fit at any time thereafter, but before judgment, permit such abandonment, in which case an entry thereof shall be made in the proceedings.*

The words in italics are new, and are intended to settle the conflict of decisions as to the power to abandon the excess at the trial: *see* vol. 1, p. 59.

In White v. Galbraith, 12 P.R. 513, the power of the court to allow such an abandonment was asserted; while in the later case of Cleveland Press v. Fleming, 24 O.R. 335, such power was denied.

If the excess is not abandoned, the proper course is for the judge to enter judgment for defendant: Vines v. Arnold, 8 C.B. 632, vol. 1, p. 104.

If the judge, nevertheless, proceeds without abandonment, prohibition may be granted: *Re* McKenzie v. Ryan, 6 P.R. 323; Cleveland Press v. Fleming, 24 O.R. 335; but such prohibition will (at any rate, in some cases) be confined to the excess: *Re* Elliot v. Biette, 21 O.R. 595; *Re* Trimble v. Miller, 22 O.R. 500.

The mere fact of the abandonment will not, before judgment, amount to a release. The plaintiff may, if he wish, withdraw the suit and sue for the full amount. If, however, he goes to trial, his recovery of the smaller amount will be a bar to any action he may bring to recover the amount abandoned: Winger v. Sibbald, 2 A.R. 610.

Some act of abandonment by the plaintiff must be made. Neither the judge nor the plaintiff's agent at the trial could reduce the claim to bring it within the jurisdiction: Isaac v. Wyld, 7 Ex. 163. The safer course would be to file an abandonment signed by the plaintiff, or by some one with his authority *for him.*

The abandonment must be made before judgment. If not so made, prohibition may still be granted. The defendant is entitled to have the plaintiff bound by the abandonment before judgment, so that the adjudication will be final between the parties as to the cause of action in dispute.

PROCESS.

8. All first process, with the exception of warrants of attachment issued by Justices of the Peace, shall be issued under the seal of the Court, be signed by the Clerk, dated the day on which the claim is entered for suit, and numbered to correspond with the claim on which it issues.

Rules 8-13

Dated the day on which the claim is entered.—*See* notes to section 44, vol. 1, p. 36; notes to section 94, vol. 1, pp. 127 and 128.

Duly stamped.—*See* notes to section 6, pp. 2 and 3. The entry of the claim is the commencement of the suit, and stops the running of the Statute of Limitations for the purpose of the action. *See* Edgar v. Magee, 1 O.R. 287, and notes to rule 25, *infra*.

9. The first process issued in a suit under the seal of the Court shall, for all purposes, be held to be the commencement of the action.

First process.—*See* sections 6 and 44 and notes thereto, vol. 1, pp. 2 and 36.

10. The first process for a recovery of a debt or money demand, or for a tort or other personal action, may be a summons, and called "ordinary summons" (Form 49).

Debt or money demand.—*See* notes to section 109, vol. 1, p. 126.

Or other personal action.—*See* notes to section 70, sub-section 1, paragraph (*a*); and to section 94; and *see* Whidden v. Jackson, 18 A.R. 440.

An ordinary summons is a summons which requires the defendant to appear at the court to defend the action.

A special summons requires him to also put in a notice disputing claim, and on failing to do so condemns him in the amount claimed.

11. In actions for the recovery of a debt or money demand, where the particulars of the plaintiff's claim are given with reasonable certainty and detail, the first process may be a summons (Form No. 47), which shall be called "special summons."

With reasonable certainty and detail.—*See* notes to sections 109, 110, 111, and to rules 3 and 10.

12. Where an *alias* or *pluries* process becomes necessary, it shall be dated on the day on which it actually issued.

An "alias" is a second writ, and a "pluries" writ any writ after the second: Wharton, 36, 560; 7 U.C.L.J. 178; *see* note to section 109, vol. 1, p. 150.

13. Where the plaintiff sues under the 229th section of the Act, the proceedings may be by "ordinary summons," or "special summons." At the end of the

particulars, or in addition to the notices and warnings on the summons, the notices and warning set forth in Form No. 52 shall be given. Rules 13-16

See notes to sections 44 and 229, vol. 1, pp. 36, 37, and 316. The nominal plaintiff has no power to discharge the suit.

14. Leave to bring an action under the 83rd section of the Act may be granted by the Judge, on production of an affidavit (Form No. 23), and in the summons it shall be stated, "Issued by leave of the Judge."

Leave should be granted *ex parte: Re* Trust and Investment Corporation of South Africa, (1892) 3 Ch. 332.

15. Where there are more defendants than one, and they reside in different counties, concurrent summonses may issue for the service of the defendants residing out of the county in which the action is brought, but the costs only of the summonses actually served shall be allowed on taxation, unless the Judge directs otherwise; and such concurrent summonses shall correspond with the original, and be marked in the margin "Concurrent summons."

Concurrent Summonses.—In analogy, *see* C.R. 236, *et seq.*

SERVICE OF SUMMONS.

16. Every summons shall be returnable on the eleventh day after the day of service thereof upon the defendant, in case the defendant, or one of the defendants, resides in the county in which the action is brought; in case the defendant does not reside, or in case none of the defendants, if there be more than one, reside in the county in which the action is brought, such summons shall be returnable on the sixteenth day after the day of such service.

Returnable on eleventh day.—The day of service is excluded: Young v. Higgon, 6 M. & W. 49; Bank of British North America v. Hughes, 16 P.R. 61; and notes to section 109, vol. 1, p. 148.

Sections 96 and 97, vol. 1, p. 129, make provision for the return of summonses in the cases here mentioned.

Rules 17-20

17. The summons, with a copy of the account or of the particulars of the claim or demand attached, shall be served ten days at least before the return day thereof.

This is but a repetition of section 96: *see* vol. 1, p. 129.

18. In case the defendant does not reside, or in case none of the defendants (if there be more than one) reside in the county in which the action is brought, the summons must be served fifteen days at least before the return day thereof.

This is a repetition of section 97.

19. In case of defendants having different or separate, and not joint, interests in an action, the summons must be served on any defendant residing out of the county in which the action is brought fifteen days at least before the return day thereof.

This is an important rule. It would seem that a plaintiff cannot by joining a cause of action against a non-resident defendant, which did not wholly arise in the division where the action is brought, give the court jurisdiction merely because he has another cause of action against a resident defendant which is therefore properly the subject of the action.

If the non-resident defendant is properly a party to the cause of action against the resident defendant, or if the cause of action against him arose within the jurisdiction, the action is properly before the court; otherwise an objection to the jurisdiction would appear to be well taken. *See* section 81, vol. 1, p. 109. Where there is a joint liability of all the defendants, and one of them resides within the county, the summons is properly made returnable on the eleventh day.

SUBSTITUTIONAL SERVICE.

20. Where it is made to appear to the Judge upon affidavit that reasonable efforts have been made to effect personal service of the summons upon the defendant, primary debtor, or garnishee, and either that the summons has come to the knowledge of the defendant, primary debtor, or garnishee, or that he wilfully evades service of the same, or has absconded, either before or after the issue of summons, or is out of the Province of Ontario, but having in Ontario an office and an agent doing business on his behalf, the Judge may, by order, grant leave to the plaintiff to serve the summons, in such

manner, at such place, or upon such person, for the defendant, primary debtor, or garnishee, as to him may seem proper, and may grant leave to the plaintiff to proceed as if personal service had been effected, subject to such conditions as the Judge may impose, and in the same order the Judge may direct that all further notices and orders in the suit up to judgment may be served in the same manner as he has directed substitutional service of the summons.

The concluding words of the section authorize substitutional service of all further notices and orders as well as the summons. In other respects the rule is the same as section 100 : *see* vol. 1, pp. 133-136.

21. Every summons issued against a corporation, firm, or individual, not having its chief place of business within the Province, and all subsequent papers and proceedings in the action or proceeding in which the summons has been issued, may be served on the agent of the corporation, firm, or individual, whose office or place of business, as such agent, is either within the division in which the summons issued or is nearest thereto.

This is identical with sub-section 1 of section 101, vol. 1, pp. 136-138.

22. Under the 83rd section of the Act, the leave to be granted for issuing a summons shall be by the Judge before whom the action is to be tried under the order, but no leave shall be given to bring a suit in a division other than the one adjacent to the division in which the party to be sued resides, but the division may be in the same or an adjoining county.

See also rule 14. This is identical with old rule 123. The 83rd section authorizes an action to be entered and tried in any division adjacent to the division in which the defendant or one of several defendants resides. *See* vol. 1, p. 115.

Flooding Lands in Certain Districts.

23. Any action under 52 Vict., cap. 16 (Ontario), for flooding lands, where the sum claimed does not exceed $20, may be commenced by ordinary summons, and the proceedings thereafter shall be as in any ordinary case.

See vol. 1, p. 70.

Rules 24-25

Notice of Writ as to Change of Venue.

24. The notice required by section 98 of the Act shall be endorsed on the summons and be signed by the Clerk in the words of Form No. 48.

It is important to observe that this notice must be *signed* by the clerk. A failure to do this might be held to enlarge indefinitely (to the trial?) the right to move to change the place of trial. A lithographed signature would be insufficient: R. v. Cowper, 24 Q.B.D. 533; but the signature of the clerk's name by a clerk in his office, authorized by him, would probably be sufficient: France v. Dutton, (1891) 2 Q.B. 208. *See* further as to what is a signature, vol. 1, pp. 77 and 78.

Renewal of Writ.

25. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of said date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to a Judge for leave to serve the writ after, and notwithstanding the lapse of, the said period.

(*a*) The Judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the service shall be good if made within twelve months from the date of the order, and so from time to time during the currency of the further period allowed.

(*b*) The writ shall in such case be renewed by being marked with the date of the day, month, and year of such renewal, to be so marked by the Clerk upon delivery to him by the plaintiff, his solicitor or agent, of the Judge's order.

(*c*) In such case, the original writ shall be available to prevent the operation of any statute whereby the time for the commencement of the action is limited, and for all other purposes, from the date of the original issue of the writ.

This is a material alteration of the old rule 127. It is now substantially identical with C.R. 238, and its English prototype, Ord. viii., r. 3; and the decisions under these rules are, therefore, applicable to the practice under this rule.

Including the day of said date.—The day of the issue of the summons is included in the computation of the twelve months. It would, therefore, be necessary for a plaintiff issuing a summons on 7th June, 1894, to apply to the judge for an order for renewal on or before 6th June, 1895.

Before the expiration of the twelve months.—There is no rule of the Division Courts similar to C.R. 485: *see* St. Louis v. O'Callaghan, 13 P.R. 322. All rules as to time are, therefore, obligatory: Barker v. Palmer, 8 Q.B.D. 558; R. v. Court of Revision of Cornwall, 25 U.C.R. 286. There would be no jurisdiction to renew the writ if the application were not made within the prescribed time: Doyle v. Kaufman, 3 Q.B.D. 7, 340.

Apply to the judge.—It is necessary only that the application be made within the twelve months. It is not necessary that the judge should grant the order within that period.

If the judge is absent, the papers should be left with the clerk, and the application may then be considered as made: *see* vol. 1, p. 118.

Reasonable efforts.—The judge should be satisfied that all has been done, that could reasonably be expected, to serve the defendant, or ascertain his whereabouts, and the affidavits must show what those efforts were: Lush's Practice, 3rd ed., p. 375; Firth v. Bush, 9 Jur. N.S. 431.

What is meant by reasonable efforts must depend on the circumstances of each particular case: Tomlinson v. Goatley, L.R. 1 C.P. 231; *see* also vol. 1, p. 134. Where a defendant went away to avoid service, and could not be found, a proper case would be made out: Smalpage v. Tonge, 17 Q.B.D. 644.

It is for the judge to determine whether the facts give him jurisdiction under this section, and the High Court will not review his decision: *Re* Hibbitt v. Schilbroth, 18 O.R. 399.

Other good reason.—Where plaintiffs delayed service of the writ for nearly four years, awaiting the determination of another suit, which, if decided in a certain way, would have made the action useless, it was held that this was not a good reason: Howland v. Dominion Bank, 15 P.R. 56; 22 S.C.R. 130. "The position of the defendant should be considered, and he should not have an action hanging over him for an indefinite time, unless some good excuse for want of diligence in its prosecution be shown": *per* Osler, J.A., 15 P.R. 62.

But where the delay arose from the pendency of an appeal in an action between the same parties, the decision of which would affect the plaintiff's course, the order for renewal was made: Gilmour v. Magee, 14 P.R. 120; and where some of the defendants could not be found, and the plaintiff was in feeble health, and unable to give the matter attention, an order for renewal was confirmed: Cairns v. Airth, 16 P.R. 100.

Of the judge's order.—The original order of the judge must be delivered to the clerk. The renewal is for twelve months from the date of the order, the date of the order not being included.

Statute of Limitations.—*See* vol. 1, pp. 180-182.

Amendments.

26. In case a special summons is issued when an ordinary summons should have been issued, or *vice versa*,

Rules 26-28

the same may be altered or amended by order of the Judge, either before or at the hearing, on such terms as the Judge may direct.

Similar to old rule 104. Rule 239 is the rule which deals with amendments to proceedings; *see* also rule 3, *supra*. If a special summons should be issued when an ordinary summons should have been issued, the clerk would have no jurisdiction to sign judgment by default; his right is confined to cases where the requirements of section 109 are complied with. Any such judgment would be set aside by the judge, or proceedings thereon prohibited until an amendment was made and the trial proceeded with in the ordinary way. If an ordinary summons is ordered by the plaintiff for a claim for which a special summons would be warranted, he runs the risk of costs under rule 149 (*a*).

ABSCONDING DEBTORS.

27. In all cases where an attachment shall issue (whether the suit be commenced by attachment in the first instance or not), unless the defendant shall have been personally served, the hearing or trial shall not take place until a month after the seizure under the attachment, unless the Judge shall otherwise order.

Similar to old rule 35.

Affidavit for attachment.—*See* section 249 and notes thereto.

Shall not be personally served.—*See* notes to sections 81 and 99, vol. 1, pp. 109 and 130.

Until a month after the seizure.—*See* sections 260 and 261 and notes thereto, vol. 1, p. 350.

28. When several persons sue out warrants of attachment against an absconding, removing, or concealed debtor, each one of such attaching creditors may enter a defence, set-off, or counterclaim, and call and examine and cross-examine witnesses as to any debt or claim proved, or attempted to be proved, against the debtor, or as to such set-off or counterclaim, in the same way and to the same extent as the debtor himself might do, were he personally to appear and defend the suit, on any ground whatever.

Set-off or counterclaim.—The rule is the same as old rule number 36, except that creditors are authorized to enter a set-off or counterclaim on behalf of the debtor *to the same extent as the debtor himself.* *See* notes to section 188, vol. 1, p. 272.

29. Before issuing an attachment against an absconding, removing, or concealed debtor, it shall be the duty of the Clerk to see that immediately following the statement in the affidavit of the amount due to the attaching creditor the cause and subject of such indebtedness is properly set forth according to Form No. 26.

See old rule 35. Form No. 26 is the form of affidavit prescribed by the General Rules and Orders, pursuant to section 249: *see* vol. 1, p. 335, *et seq.* The duty is imposed on the clerk of seeing that the cause and subject of the indebtedness is properly set forth, pursuant to form. The form should be adhered to as closely as possible: Archibald v. Hubley, 18 S.C.R. 116: Morse v. Phinney, 22 S.C.R. 563. The allegation of the intent and design of the debtor being to defraud is necessary in all cases. As to who is an absconding debtor, *see* vol. 1, p. 337: Coffey v. Scane, 14 C.L.T. 208.

30. In case several judgments have been recovered against an absconding debtor, it shall not be necessary to issue execution upon each such judgment; but one execution against the property seized upon the attachment shall issue for the sale thereof to satisfy the judgments of those creditors, and enough of such property as shall be sufficient to satisfy the said judgments and costs may be sold thereunder, according to law. (Form No. 132*a*.) Or if the property has been previously sold as perishable, enough of the proceeds may be applied by the Clerk to satisfy such judgments and costs, without execution.

This is a new provision. But one execution will hereafter be necessary, and all judgment creditors who obtained attachments will be entitled to share. This varies section 254 of the Act, vol. 1, p. 345. Notice of the attachment in each case must be given within one month after the issue of the first attachment to the clerk of the court out of which the first attachment issued, or in which it was made returnable. *See* sections 256 and 257, vol. 1, pp. 346 and 374

31. The proceeds of such execution, or of the sale of the property, shall, after deducting all costs, remain in the hands of the Clerk, and be distributed ratably amongst such creditors as are entitled to share therein to the extent of their claims, and the surplus, if any, shall be paid to the person entitled thereto.

Rule 31

(*a*) Where the amount levied by the Bailiff, or in the hands of or collected by the Clerk, is not sufficient to pay the execution debts, and satisfy the judgments of all the creditors entitled to share in the distribution, with costs in full, the money shall be applied to the payment, ratably, of such debts and costs of the creditors, after retaining the Bailiff's fees, and after payment in full of the costs taxed, and the costs of the execution, to the creditor at whose instance and under whose attachment or execution the seizure and levy were made.

(*b*) The Clerk shall, before distributing the money, prepare for examination by the debtor and his creditors a list of the creditors entitled to share in such distribution, with the amount due to each, for principal, interest, and costs, the total amount to be distributed, and the amount going to each according to such ratable distribution.

(*c*) Any party entitled to or interested in any money or debt attached or made, by virtue of an attachment or otherwise, against an absconding debtor, in the hands of the Clerk or Bailiff, who is not satisfied with the proposed plan of distribution thereof by the Clerk, may apply to the Judge for an order to correct or change such distribution.

(*d*) The Clerk shall deliver or send (prepaid and registered), by post, to each creditor, a notice that the said list has been so prepared, and may be examined at his office, at any time within five days from the day of the date of the notice; and that unless within ten days after the day of the date of the notice objection to such a list has been filed with the said Clerk the said list shall be binding upon all parties concerned, unless the judge shall otherwise order.

This is a new rule. The proceeds of the execution are distributable ratably, pursuant to section 256, vol. 1, p. 346. **Rules 31-32**

After deducting all costs.—The costs are by the rule first to be deducted only when there is sufficient to satisfy all claims in full: *see* vol. 1, p. 347. When there is a deficiency, the bailiff's fees and the costs taxed and the costs of the execution only are first to be deducted. It may happen that the seizure may be made under the attachment of one creditor, and the execution may be issued under the judgment of another. In such case, what is the proper construction of the rule? It is submitted that the costs of the first attaching creditor are to be paid in full, he being the creditor at whose instance and under whose attachment the seizure was made, and that the costs of the execution, being an execution for the benefit of all, are also to be paid, irrespective of the action in which it is issued. To prevent difficulty, it will be better that execution should always issue in the action of the first attaching creditor: *see* Darling v. Smith, 10 P.R. 360; Hughes v. Field, 9 P.R. 127.

Wages to the extent of three months take precedence of other claims when an attachment is made by a sheriff under the Act respecting absconding debtors, 55 Vict., c. 27, s. 2; but when a distribution is made in a Division Court, all creditors share ratably.

Scheme of distribution.—The scheme of distribution must be prepared by the clerk: *see* additional forms. Notice must then be delivered or sent to each creditor. The clerk must keep the scheme open for examination for five days after sending the notice. The day of sending the notice must not be reckoned. After ten days, if no objection has been filed, the clerk may distribute.

May apply for an order.—No time is limited within which the application for the order should be made, nor is any power given to the clerk to distribute the amount not affected by the objection. Compare Creditors' Relief Act, R.S.O., c. 65, s. 32. No provision is made for the costs of the contestation. It is submitted that the application should be made within a reasonable time, and that in the event of no application being made a notice might be given to the party filing the objection that an application would be made to the judge to confirm the scheme and for an order for distribution, unless an application were made within a time limited by the judge to correct or change the distribution. *See* additional forms—*post*.

INTERPLEADER.

32. When any claim shall be made to or in respect of any goods or chattels, property or security, taken in execution, or attached, under the process of any Division Court, or in respect of the proceeds or value thereof, by any landlord, for rent, or by any person, not being the party against whom such process has issued, and a summons has been issued, on the application of the officer charged with the execution of such process, such summons shall be served, in such time and manner as is directed for service of an ordinary summons to appear.

Rules 32-33

(*a*) If the goods or chattels, property or security, were seized or attached while in possession of the claimant, the case shall proceed as if the attaching creditor were the plaintiff, and the claimant were the defendant. In all other cases, it shall proceed as if the claimant were the plaintiff, and the execution or attaching creditor were the defendant.

The first part of this rule is similar to the first part of old rule 37. The bailiff should not retire from possession: *Ex parte* Summers, 18 Jurist 522. *See* notes to section 269, vol. 1, pp. 356-364.

Taken in execution.—*See* sections 212 and 228, vol. 1, pp. 292-314.

Attached.—*See* section 251 and notes, vol. 1, p. 343.

The proceeds or value thereof.—*See* section 269, p. 356, and Reid v. Macdonald, 26 C.P. 147; Smith v. Critchfield, 14 Q.B.D. 873, cited on p. 358.

Who should be plaintiff.—The old rule 37 provided that the claimant should be plaintiff. This rule adopts in stringent form the rule of decision now prevailing in the High Court: Duncan v. Tees, 11 P.R. 66, 296; Dominion L. & S. Co. v. Kilroy, 7 C.L.T. 87. It rejects the distinction suggested in Doran v. Toronto Suspender Co., 14 P.R. 103, that when the claimant claims by transfer from the execution debtor he should be required to prove his title. The object of the issue being to inform the conscience of the court, it is immaterial for that purpose which party is made plaintiff: *per* Crompton, J., Edwards v. English, 7 E.& B. 566; Bryce v. Kinnee, 14 P.R. 509.

Husband and wife.—Where husband and wife live together in the same house, the husband being owner or tenant, he is in apparent possession, and the wife, claiming household goods not being articles for her personal use, must be made plaintiff: Hogaboom v. Grundy, 16 P.R. 47. But a stock of goods of *a business* conducted in the name of the wife, though by the husband under power of attorney, are in her possession: Dominion L. & S. Co. v. Kilroy, 7 C.L.T. 87; and *see* Ramsay v. Margrett, (1894) 2 Q.B. 18.

Question to be tried.—The question to be tried when the execution creditor is plaintiff is, "Were the goods at the time of seizure exigible under his execution?": Duncan v. Tees, 11 P.R. 296; or, in other words, were they the property of the debtor? Winfield v. Fowlie, 14 O.R. 102.

The practice of making the execution creditor plaintiff is extremely inconvenient, and is frequently productive of much injustice: *per* Armour, J., 14 O.R. 107. A bailiff has not, although a sheriff now has, the right to refuse to seize goods of a debtor which are in the possession of a third party. *See* 56 Vict., c. 5, s. 11.

33. The claimant shall, within five days after the day of service of the summons upon him, deliver to the Bailiff, or leave at the office of the Clerk of the Court, a particular of any goods or chattels, property or security, alleged to be the property of the claimant, and the grounds of his claim, set forth in ordinary and concise

language; or, in case of a claim for rent, the amount thereof, for what period, in respect to what premises the same is claimed to be due, and the terms of holding; and any money paid into Court shall be retained by the Clerk until the claim shall be adjudicated upon; provided that, by consent of all parties, or without such consent, if the Judge shall so direct, an interpleader claim may be tried, although these rules may not have been complied with.

This rule varies the old rule 38 in important particulars.

Within five days.—Particulars delivered before the service of summons would not be in compliance with this rule: Thwaites v. Wilding, 11 Q.B.D. 421; 12 Q.B.D. 4. This means exclusive of the day of service.

A particular.—The particulars should state how and by what right the claimant asserts his title. A claim to certain goods, stating that they had been assigned to the claimant by deed, giving the date and parties, is sufficient, although it does not appear that the deed was good as against creditors: R. v. Richards, 2 L.M. & P. 263.

The ground of his claim.—Goods having been seized under an execution issued out of a County Court were claimed by a third party, who delivered particulars of his claim. The judge refused to adjudicate on the claim, on the ground that the particulars did not distinguish that portion of the goods seized to which the claimant was entitled. *Held*, that he should have determined what part the claimant was entitled to, and given judgment accordingly: Reg. v. Stapleton, 15 Jur. 1177; 21 L.J.Q.B. 8, s.c. A notice that goods "are and were my own property, and not the property of R.," is not a compliance with the rule; and in Hestop v. McGeorge, 18 L.T. 109, it is held that the claim need not specify the goods, but in Richardson v. Wright, L.R. 10 Ex. 367, the court was equally divided upon the question: Beswick v. Boffey, 9 Ex. 315; R. v. Chilton, 15 Q.B. 220; *Ex parte* Tanner, 19 L.J. (Q.B.) 318. The question is, do the particulars tend to mislead? *Ex parte* McFee, 9 Ex. 261. For form, *see* form 168.

Shall be adjudicated upon.—*See* notes to section 269, sub-section 3, vol. 1, p. 362. The judge must adjudicate at some time upon the claim. If the particulars are insufficient he should order their amendment: R. v. Chilton, 15 Q.B. 220; Fraser v. Fothergill, 14 C.B. 298. If he should erroneously decide that they are insufficient, and decide against the claimant, he may be compelled by mandamus to hear the case: R. v. Richards, 2 L.M. & P. 263; Churchward v. Coleman, L.R. 2 Q.B. 18; Whitehead v. Proctor, 3 H. & N. 352; or he may be prohibited from proceeding on the judgment pending the interpleader: *Ex parte* McFee, 9 Ex. 261.

Without such consent.—The judge may dispense with particulars of claim, or even with the issue of a summons.

34. In case the claimant shall not have complied with the rule in respect of delivering a particular of his claim, the Judge may, upon such terms as he may direct, allow him to deliver the same.

Rules 34-35

Old rule 39 provided that the judge might order the trial and proceedings to be adjourned so as to enable him fully to adjudicate upon the claim on the merits. The present rule, read with section 118 of the Act, is practically to the same effect: *see* vol. 1, p. 167.

35. Where the claim to any goods or chattels, property or security, taken in execution or attached, or the proceeds or value thereof, shall be dismissed, the costs of the Bailiff shall be allowed to him out of the amount levied, unless the Judge shall otherwise order.

(a) Where, under sub-section 3 of section 269 of the Act, the claimant to goods taken under process claims damages from the creditor or from the Bailiff, for or in respect of the seizure of the property, he shall, in the particulars of his claim to the goods, state the amount he claims for damages, and the grounds upon which he claims such damages.

(b) Where a creditor claims damages against a Bailiff, arising out of the execution of any process, he shall, five clear days before the day upon which the interpleader is to be tried, deliver to the Bailiff a notice of such claim, stating the grounds and amount of such claim.

(c) Where a claim for damages, under sub-section 3 of section 269 of the Act, is made against a Bailiff and creditor, or either of them, they, or either of them, may pay into Court money in full satisfaction of such claim for damages, and such payment into Court shall be made in the same manner and have the same effect, and the parties respectively shall have the same rights and remedies of defence and counterclaim as they would respectively have if the proceeding were an action in which the claimant was plaintiff, and the Bailiff and creditor defendants.

(d) Interpleader summonses shall be issued by the Clerk, on the application of the Bailiff, and shall be served on the claimant and creditor, or upon any solicitor or agent who acts for claimant or creditor. Rule 35

(e) Interpleader summonses shall be issued from the Court from which the process issued, or the Court holden for the division in which the seizure under the process was made, at the option of the Bailiff, and the creditor and claimant shall be summoned to such Court, but subject to the power of the Judge, in his discretion, to change the place of trial.

(f) In every case in which an execution or attachment has been issued to a Bailiff who has seized property as belonging to a judgment or absconding debtor, if the Bailiff finds that there is an incumbrance or lien upon the property, or such a claim made thereto as is provided for in section 269 of the Act, it shall be the duty of the Bailiff forthwith to notify the party who issued the process of such incumbrance, lien, or claim; and if the party issuing such process insists upon the Bailiff maintaining such seizure, it shall be incumbent upon him to deposit with the Clerk a sufficient sum of money to indemnify the Clerk and the Bailiff against their costs of an interpleader; and in the event of his neglecting or refusing to do so, the Bailiff may, in his own discretion, abandon the seizure, and the party who issued the process shall be barred, unless the Judge shall otherwise order.

(g) In case the claimant so desires, he may deposit with the Bailiff an amount equal to the value of the property seized or attached, or to the amount

Rule 35

for which the seizure or attachment has been made, whichever shall be the lesser sum, to be by such Bailiff paid into Court to abide the decision of the Judge upon such claim, and thereupon the Bailiff shall redeliver the property to the claimant. In case of disagreement as to the value of the property seized or attached, the matter shall be decided by the Clerk or the Judge.

Costs to be deducted.—The claimant might also be ordered to pay them, including possession money from the time of making the claim. Should the judgment be in favor of the claimant, the execution creditor would be ordered to pay the bailiff's fees and the costs: Searle v. Matthews, W.N. (1883) 176; Goodman v. Blake, 19 Q.B.D. 77; Reid v. Murphy, 12 P.R. 246.

Damages against creditor or bailiff.—If any claim for damages be not adjudicated upon in the interpleader proceedings, the claimant is absolutely barred from recovering them from the creditor or bailiff: Fox v. Symington, 13 A.R. 296. The language used in the rule is: "For or in respect of the seizure of the property." The language of the statute is: "In respect of any damage or claim of, or to damages arising or capable of arising out of the execution of the process." There may be damages arising from a sale or from some misconduct of the officer. The rule does not compel the claimant to state the amount or grounds of his claim to these, although the Act requires the judge to adjudicate upon them. Power is given by rule 34 to the judge to enlarge the time for giving particulars of claim to the goods, and rule 239 gives ample powers of amendment of particulars delivered; but it would appear that if no claim to damages is made by the particulars, there is no power to enlarge the time. *See* notes to rule 25; also vol. 1, p. 118.

Damages claimed by creditor against bailiff.—These would be damages arising from failure to seize or from withdrawal from seizure. *See* vol. 1, p. 359.

Five clear days.—*See* rule 2, "clear days."

Payment into court.—This provision is very similar to Ord. xxvii., r. 9, of the English C.C.R., 1889. The words "of defence and counterclaim" are not in the English rule, and were not necessary in above rule, as sub-section 6 of section 269 covered the question. As to payment into court, *see* vol. 1, p. 176. The payment into court must be made six clear days before the return day. *See* also rules 171, 244, and 245, *infra*, and notes thereto.

On application of the bailiff.—The statute provides for the issue of summons on application of bailiff: section 269. For form of application, *see* vol. 1, p. 360; 4 U.C.L.J. 38.

Upon any solicitor or agent.—This is an official recognition of the status of a solicitor or agent in Division Court proceedings.

From what court to issue.—Section 269 of the Act contemplates the issue of the summons from the court from which the process issued, but gives the option to have it returnable before that court or the court for the division in which the seizure took place. It seems doubtful whether any clerk, other than the one who issued the process, can issue the interpleader summons. The rule, however, makes it clear that the bailiff has the option of saying before which court it shall be returnable.

Rule 35

Change place of trial.—This is the only case in which a discretionary power is given to the judge to change the place of trial of proceedings in the Division Court In other cases the place must be changed on certain facts appearing, or the court will cease to have jurisdiction. The place of trial should not be changed unless the preponderance of convenience would be in favor of the other division to that chosen by the bailiff: Peer v. Northwest Transportation Company, 14 P.R. 381; Berlin Piano Co. v. Truaisch, 15 P.R. 68; Brethour v. Brooke, 15 P.R. 205; Dowie v. Partlo, 15 P.R. 313. Instead of changing the place of trial, the judge may, under his discretionary power over costs, apportion the costs of the trial so as to do justice: McArthur v. Michigan Central Railway Co., 15 P.R. 77; Roberts v. Great Northern Railway Co., (1891) 2 Q.B. 194. *See* section 207, vol. 1, p. 289.

Security for costs.—The clerk and bailiff are simply to be indemnified against the costs of interpleader. The bailiff is not indemnified against a claim to damages by the claimant. No time is limited within which the creditor is to elect whether the bailiff shall maintain or relinquish the seizure. Where a sheriff makes a seizure, the execution creditor is given seven days to admit or dispute the claim: 56 Vict., c. 5, s. 10 (1893). The clerk's and bailiff's costs of interpleader are, as a rule, so little in the Division Court that it must be contemplated that notice should be given by the creditor within a short period; otherwise, the expense of maintaining possession (for which the bailiff would have no indemnity) would soon be as much as or greater than the costs of interpleader. The English County Court Rules, 1889, Ord. xxvii., r. 1, require the execution creditor to send notice to the bailiff in due course of post.

May abandon the seizure.—The bailiff owes no duty to the claimant to obtain security for costs. He may interplead without notifying beforehand the plaintiff of the incumbrance, lien, or claim. The question of what constitutes an abandonment will be found discussed in vol. 1, pp. 297 and 298.

Shall be barred.—If the creditor do not deposit the costs of interpleader after notice, he is barred. In effect, there is an adjudication that the goods seized are, as against him, on that execution, the property of the claimant. There could be no further seizure after abandonment except by order of the judge. A motion for such an order should ordinarily be on notice, as the claimant's position might, in the meantime, have been altered on the faith of the creditor being barred.

Payment of value of property.—Sub-section (*g*) is taken from the (English) County Courts Act, 1888 (51 & 52 Vict., c. 43, s. 156). That statute, however, also enables a claimant to regain possession upon giving a bond for the value of the goods claimed. It has, apparently, been thought best not to confer such a power here, and the bailiff must therefore retain possession of the goods unless the money is deposited with him or a sale is made under rule 36 or 37, or the goods are sold by consent. *See* vol. 1, pp. 359 and 360.

To abide the decision of the judge.—If a claimant pay money into court under this rule and fails, and the creditor takes the money out of court, and the same is insufficient to satisfy his judgment, he cannot, *on that judgment*, seize the goods a second time. "By the payment into court, the claimant does not acquire any property in the goods; but the judgment creditor, by taking out of court the money paid in by the claimant, elects to accept the money in lieu of the goods, and is thereby estopped from afterwards denying that, as against himself, the goods were the goods of the claimant": Haddow v. Morton, (1894) 1 Q.B. 95 and 565. "It is not necessary to determine what might be the result if the judgment creditor had seized the goods a second time on another judgment": *per* Lord Esher, M.R., *ib.*, p. 567.

Rules 35-36

Disagreement to be decided by clerk or judge.—The method of obtaining the decision is not provided. It is submitted that the clerk and judge have equal power, and the decision of either is final. There is no right to appeal to the judge from the decision of the clerk. The bailiff and claimant should each attend before the clerk or judge when the question of value is decided, if the decision is arrived at from evidence. It would, however, be competent to arrive at it upon a view of the property: Collins v. Collins, 26 Beav. 306; Bos v. Helsham, L.R. 2 Ex. 72; *Re* Dawdy, 15 Q.B.D 426.

36. It shall be lawful for the Judge, upon the application of any party to any action or matter pending in the Court, to make any order for the sale by the Bailiff or by any person named in such order, and in such manner and on such terms as the Judge may think reasonable, of any goods, cattle, property, wares, or merchandise which may be of a perishable nature, or which incur charges for food or keeping, or which for any other just and sufficient cause it may be proper to have sold at once.

Taken from English County Court Rules, 1889, Ord. xii., r. 2, and C.R. 1133.

Order for sale.—This rule is very far-reaching, and modifies the provisions of the statute regarding the length of notice of sale, etc. The judge may in any proper case order any goods the subject of the action or under seizure to be sold at once, and may provide the manner and terms of sale: *see* vol. 1, pp. 317, 318, 319, and 352. An order under this rule should only be made on notice to the debtor, claimant, and other parties interested. Any reasonable notice would be sufficient. The English Rule (Ord. xii., r. 11) allows the application to be made *ex parte*.

Liability of sale.—The sale being the act of the court, neither the execution creditor nor the bailiff, or other person making the sale, would be liable for any special damage caused by it. Their liability would be confined to the seizure and the time between it and the order: Walker v. Olding, 1 H. & C. 621; Abbott v. Richards, 15 M. & W. 194; Lister v. Northern Railway Co., 19 C.P. 408; Kennedy v. Patterson, 22 U.C.R. 556; Reid v. Gowans, 13 A.R. 501.

Advertisement of sale.—The sale should not be advertised as being made under the execution, but under the order of the judge.

Proceeds.—The order should provide for payment of the proceeds after deducting expenses into court: *see* additional forms. The liability for the expenses of sale may be disposed of on or after the determination of any contest as to the title to the goods: Reid v. Murphy, 12 P.R. 338; Goodman v. Blake, 19 Q.B.D. 77.

Any action or matter pending in the court.—Under a similar rule, a horse, which was the subject of an action for breach of warranty, was ordered to be sold pending the trial: Bartholomew v. Freeman, 3 C.P.D. 316.

37. The claimant of goods, chattels, cattle, or property referred to in section 269 of the Act must, in making his claim, if he wishes to prevent a sale thereof, deposit with the Bailiff either the amount of the value of the goods claimed—(such value to be fixed by appraisement, in case of dispute)—to be by such Bailiff paid into Court to abide the final result of the proceedings upon such claim; or the sum which the Bailiff shall be allowed to charge as costs for keeping possession of such goods, chattels, cattle, or property until such decision can be obtained, and in default of the claimant so doing the Bailiff shall sell such goods as if no such claim had been made, and shall pay into Court the proceeds of such sale, to abide the final decision of the matter. Rule 37

This rule is taken from the English County Courts Act, 1888 (51 & 52 Vict., c. 43, s. 156).

To be fixed by appraisement.—These words are taken from the English Act. It is difficult to see why identical words were not used in this rule and in rule 35 (*g*). How is the appraisement to be made? Section 154 of the English Act provides a method, but our Act and rules are silent. The only analogous proceeding is the appraisement provided for in section 251 on seizure of the goods of an absconding debtor: *see* vol. 1, pp. 343 and 344. It is submitted that the procedure there prescribed should be followed. For form of appraisement, *see* Form No. 233.

Costs for keeping possession.—These are "reasonable allowances and disbursements necessarily incurred in the care and removal of property": *see* tariff of bailiff's fees, item 13. The bill of disbursements which will be incurred should be submitted to the clerk for taxation, subject to appeal to the judge, item 13 (*a*). It will be observed that the claimant is liable only to pay costs "for keeping possession," not costs of seizure or any other costs. The claimant must multiply the amount of possession money for a day by the number of days to elapse before trial: Cramar v. Matthews, 7 Q.B.D. 430.

Bailiff shall sell.—This duty is imperatively imposed on the bailiff. The sale would, therefore, be the act of the law, and no liability would be incurred therefor: *see* notes to rule 36; Cramar v. Matthews, 7 Q.B.D. 425.

The proceeds of the sale.—No provision is made for the deduction of the bailiff's fees or of the expenses of sale.

Time of sale.—It is not necessary for the interpleader summons to issue before sale, or for the bailiff to request a deposit of the value of the goods or the possession money. He may proceed to a sale immediately, notwithstanding the claim, unless the required deposit is made: Cramar v. Matthews, 7 Q.B.D. 425.

Rules 38-40

REPLEVIN.

38. The Division Courts have jurisdiction in all actions of replevin, in case the value of the goods, or other property, or effects distrained, taken, or detained, does not exceed the sum of $60.00, and in case the title to land is not brought in question.

This is substantially a combination of section 72 of the Act and section 5 of the Replevin Act, R.S.O., c. 55. *See* vol. 1, pp. 79 and 80.

WHEN GOODS REPLEVIABLE.

39. Wherever any goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of account, papers, writings, valuable securities, or other personal property or effects have been wrongfully distrained, under circumstances in which, by the law of England, on the fifth day of December, one thousand eight hundred and fifty-nine, replevin might have been made, the person complaining of such distress as unlawful may obtain a writ of replevin in the manner prescribed by these rules; or in case any such goods, chattels, property, or effects have been otherwise wrongfully taken or detained, the owner or other person, or corporation capable of maintaining an action of trespass or trover for personal property, may bring an action of replevin for the recovery thereof, and for the recovery of damages sustained by reason of such unlawful caption and detention, or of such unlawful detention, in like manner as actions are brought and maintained by persons complaining of unlawful distresses.

This is substantially identical with section 2 of the Replevin Act: *see* vol. 1, p. 80.

40. No party to an action or proceeding in any Division Court shall replevy, or take out of the custody of the Bailiff, or other officer, any personal property seized by him under process against such party.

This is substantially identical with section 3 of the Replevin Act: *see* vol. 1, p. 80.

41. In actions of replevin, no other cause of action shall be joined in the summons.

Similar to old rule 41.

No other cause of action.—*See* vol. 1, p. 83.

42. The action may be brought in the Division Court for the division within which the defendant or one of the defendants resides, or carries on business, or where the goods, or other property, or effects have been distrained, taken, or detained.

This is already provided for by section 5 of the Replevin Act : *see* vol. 1, p. 80.

43. No writ of replevin shall issue out of any Division Court :

1. Unless an order is granted for the writ on an affidavit by the person claiming the property, or some other person, showing to the satisfaction of the Judge the facts of the wrongful taking or detention which is complained of, as well as the value and description of the property, and that the person claiming it is the owner thereof, or is lawfully entitled to the possession thereof (as the case may be).

2. Or unless the person claiming the property, his servant or agent, makes an affidavit, which shall be entitled and filed in the Court out of which the writ is to issue, stating :

(*a*) That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof (describing the property in the affidavit) ;

(*b*) The value thereof to the best of his belief ;

(*c*) That the property was wrongfully taken out of the possession of the claimant, or was fraudulently got out of his possession, within two calendar months next before the making of the affidavit ;

Rule 43

(*d*) That the deponent is advised, and believes that the claimant is entitled to an order for the writ;

(*e*) And that there is good reason to apprehend that unless the writ is issued without waiting for for an order, the delay would materially prejudice the just rights of the claimant in respect to the property.

3. Or (in case the property was distrained for rent or damage feasant) unless the person claiming the property, his servant or agent makes an affidavit (which shall be entitled, and filed in the Court from which the writ is to issue), stating:

(*a*) That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof (describing the property in the affidavit);

(*b*) The value thereof to the best of his belief;

(*c*) That the property was taken under color of a distress for rent or damage feasant, and in such case the writ shall state that the defendant has taken and unjustly detains the property, under color of a distress for rent, or damage feasant (as the case may be).

Unless an order is granted.—Sub-section 1 is similar to C.R. 1099 (1); *see* vol. 1, p. 34. For form of affidavit, *see* form 61; as to procedure for obtaining order, *see* rule 44, *infra*.

Or on affidavit.—Sub-section 2 is similar to C.R. 1099 (2). For form of affidavit, *see* form 62.

Rent or damage feasant.—Sub-section 3 is similar to C.R. 1099 (3): *see* form 62. No order is required at all in this case: *see* rule 50, *infra*.

Animals trespassing, or, as it is called, damage feasant (doing damage), may be distrained by the person upon whose land they are trespassing, if taken at time of the trespass: Wormer v. Biggs, 2. C. & K. 31. Hogs, pigeons, chickens, snares, nets, etc., may also be distrained damage feasant: Bacon's Abridgment, tit. Distress F; but they must not be at the time in the actual possession and use or under the actual personal control of some person. A horse on which one is riding cannot be distrained: Field v. Adames, 12 A. & E. 649; but a dog within whistle might be: Bunch v. Kennington, 1 Q.B. 680. Pigeons might be shot: Hannan v. Mockett, 2 B. & C. 939; but not chickens: Anderson's Dictionary, 305.

A railway company may distrain engines and trucks encumbering their line: Ambergate Ry. Co. v. Midland Ry. Co., 2 E. & B. 793; but if cattle escape and do damage, owing to the defect in a fence which the person who is damaged was bound to maintain, in accordance with a municipal by-law, the distress would be illegal: Ives v. Hitchcock, Dra. 247; Singleton v. Williamson, 7 H. & N. 410.

If a tender is made of sufficient amends before the animals are impounded in a common pound, the owner may sustain replevin: Gullivar v. Cozens, 1 C.B. 788; but replevin will not lie against a pound-keeper; Ibbotson v. Henry, 8 O.R. 625; or he may pay the amount demanded and recover any sum in excess of the damage as money had and received: Green v. Duckett, 11 Q.B.D. 275.

Putting down poisoned meat to kill trespassing dogs: Daniel v. Janes, 2 C.P.D. 351; or shooting fowls while trespassing: Smith v. Williams, 9 T.L.R. 9, is not a criminal offence. For forms of judgment, *see* forms 124-126. The description of the property sought to be replevied should be sufficiently clear to enable the bailiff to identify it: Jones v. Cook, 2 P.R. 396. "98 logs would be insufficient," *ib.* "230 sheep and lambs would be insufficient": Hoorigan v. Driscoll, 8 P.R. 184.

Distress damage feasant may be made not only for damage to the freehold, but for injuries to other animals: Boden v. Roscoe, (1894) 1 Q.B. 608.

44. Where an application for an order is made, the Judge may proceed on the *ex parte* application of the plaintiff, or may direct notice to be served on the defendant to show cause why the writ should not issue, and may, on the *ex parte* application, or on the return of the motion to show cause, grant or refuse the writ, or direct the Bailiff to take a bond in less or more than treble the value of the property, or may direct him to take and detain the property until the further order of the Judge, instead of at once replevying the same to the plaintiff; or may impose any terms or conditions in granting the writ, or in refusing the same, as under the circumstances in evidence appears just.

Substantially identical with C.R. 1100.

45. In actions of replevin, the first process shall be a writ of replevin and summons, called "summons in replevin" (Form No. 64). The description and value of the property shall be stated in the writ.

The concluding clause is new. The first clause is similar to old rule 13.

Rules 46-48

46. On entering a claim in replevin, the plaintiff must specify and describe, in a statement of particulars, the cattle, or the several goods, chattels, or other property, or effects distrained, taken, or detained, and the distress or other taking or detention of which he complains.

The description should be sufficiently clear to enable the property to be identified: Jones v. Cook, 2 P.R. 396; Hoorigan v. Driscoll, 8 P.R. 184; *see ante* rule 43.

47. Before the Bailiff acts on the writ, he shall take a bond with sufficient sureties in treble the value of the property to be replevied, as stated in the writ. The bond shall be assignable to the defendant; and the bond and assignment thereof may be in the words, or to the effect, in the Forms Nos. 65 and 66, the condition being varied to correspond with the writ.

Similar to C.R. 1103 and old rule 46.

The bond and assignment.—Care must be taken to see that the bond is, in cases falling within rule 49, conditioned also as required by that rule; *see* notes to section 72, vol. 1, pp. 86-88. Should the plaintiff not take a bond, the seizure should be set aside: Lawless v. Radford, 9 P.R. 33. The bond should not be in the disjunctive, but to prosecute the suit with effect *and* return the goods, etc.: Kennin v. McDonald, 22 O.R. 484. An action will lie against the bailiff for refusal to assign the bond: Pacaud v. McEwan, 31 U.C.R. 328.

48. The bond shall be subject to the provisions of section 8, chapter 11, of the Act passed by the Imperial Parliament in the eighth and ninth years of the reign of His Majesty King William the Third.

By 8 and 9 William III., c. 11, s. 8, it is enacted: "That in all actions which, from and after the said 25th day of March, 1697, shall be commenced or prosecuted in any of His Majesty's Courts of Record, upon any bond or bonds, or on any penal sum, for non-performance of any covenants or agreements in any indenture, deed, or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they shall think fit, and the jury, upon the trial of such action or actions, shall and may assess not only such damages and costs of suit as have heretofore been usually done in such cases, but also damages for such of the said breaches so to be assigned as the plaintiffs upon the trial of the issue shall prove to have been broken, and that the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions; and if judgment shall be given for the plaintiff on a demurrer, or by confession, or *nihil dicit*, the plaintiff upon the roll may suggest as many breaches of the covenants and agreements as he shall think fit, upon which shall issue a writ to the sheriff of that county where the action shall be brought, to summon a jury to appear before the justice or justices of assize, or *nisi prius*, of that county, to enquire of the truth of every one of those

breaches and to assess the damages that the plaintiff shall have sustained thereby; in which writ it shall be commanded of the said justice or justices of assize, or *nisi prius*, that he or they shall make a return thereof to the court from whence the same shall issue at the time in such writ mentioned; and in case the defendant or defendants, after such judgment entered, and before any execution executed, shall pay unto the court where the action shall be brought, to the use of the plaintiff or plaintiffs, or his or their executors or administrators, such damages so to be assessed by reason of all or any of the breaches of such covenants, together with the costs of suit, a stay of execution of the said judgment shall be entered upon the record; or if by reason of any execution executed, the plaintiff or plaintiffs, or his or their executors or administrators, shall be fully paid or satisfied, all such damages so to be assessed, together with his or their costs of suit, and all reasonable charges and expenses for executing the said executions, the Body, Lands, or Goods of the defendant shall be thereupon forthwith discharged from the said execution, which shall likewise be entered upon record; but notwithstanding in each case such judgment shall remain, continue, and be as a further security to answer to the plaintiff or plaintiffs and his or their executors or administrators such damages as shall or may be sustained for further breach of any covenant or covenants in the same Indenture, Deed, or Writing contained, upon which the plaintiff or plaintiffs may have a *scire facias* upon the said judgment against the defendant, or against his heir, *terre tenants*, or his executors or administrators, suggesting other breaches of the said covenants or agreements, and to summon him or them respectively to show cause why execution should not be had or awarded upon the said judgment, upon which there shall be the like proceedings as was in the action of debt upon the said bond or obligation for assessment of damages upon the trial of issue joined upon said breaches or enquiry thereof upon the writ to be awarded in manner as aforesaid; and that upon payment or satisfaction in manner as aforesaid of such future damages, costs, and charges as aforesaid, all further proceedings on the said judgment are again to be stayed, and so *toties quoties*, and the defendant, his body, lands, or goods, shall be discharged out of execution as aforesaid."

Rule 48

Before the Act of 8 & 9 W. 3, the practice was to enter judgment for the penalty, one shilling damages and forty shillings costs. The penalty is still the debt: Talbot v. Hodson, 7 Taunt. 251. The plaintiff may, if he please, state the condition of the bond in his statement of claim and assign several breaches, whereas at common law he could only assign one, or he may declare on the bond generally, in which case, if the defendant suffer judgment by default, or the plaintiff obtain judgment by demurrer, the plaintiff may enter a suggestion. If before the statute the defendant had pleaded a plea on which the plaintiff might have taken an issue in his replication without assigning a breach of the condition of the bond, as, for instance, that he did not execute the bond (*non est factum*), or that he was released, or that performance was excused, or rendered impossible by the act of the obligee, or was made illegal, the plaintiff might take issue, and, if successful on the issue, would be entitled to judgment for the penalty. But if defendant pleaded performance, and the plaintiff had not assigned breaches in his declaration, he was bound to assign one in his replication, and, if successful therein, he would be entitled to judgment for the penalty. Since the statute, the plaintiff is bound to *assign* breaches only when defendant pleads performance. This he may do either in his statement of claim or reply. If defendant sets up a defence under which at common law the plaintiff might take issue without assigning a breach, the plaintiff may still take issue thereon, and upon success therein he would be entitled to judgment, but would be unable to assess damages until he had *suggested* breaches as required by the statute: *see* 2 Wms. Saund. 187 (b); Meredith v. Alleyn, 1 Salk 138; Cowan v. White, 9 U.C.L.J. 131. If performance is pleaded as to part and excused as to remainder, and the plaintiff has not assigned breaches in the statement of claim, he must *assign* breaches

Rules 48-49

as to the part alleged to be performed, and if excuse traversed must *suggest* breaches, and in event of excuse being found against defendant damages will be assessed on suggestion: Webb v. James, 8 M.& W. 645; *see* Ethersey v. Jackson, 8 T.R. 255; Humfray v. Rigby, 5 M. & S. 60.

If breaches are not assigned in the statement of claim or reply, a verdict for the penalty may be set aside: Brock District Council v. Bowen, 7 U.C.R. 471. Judgment cannot be signed by default in an action on a bond within the statute: Buell v. Whitney, 11 C.P. 240; nor can speedy judgment be granted under section 111: Tuther v. Caralampi, 21 Q.B.D. 414.

As the cause of action is the penalty, if payment be made after action on a bond of the amount then due, the plaintiff must, if any further damages would be recoverable for future breaches, proceed with the action, or the defence of payment would be a bar to a second action: Randall v. Burton, 23 U.C.R. 268.

No more than the amount of the penalty can be recovered: McMahon v. Ingersoll, 6 O.S. 301; Randall v. Burton, 4 P.R. 9; Hatton v. Harris, (1892) A.C. 547. The defendant cannot plead to the breaches suggested: Archbishop of Canterbury v. Robertson, 1 C. & M. 690.

The bond could be sued upon in the Division Court, no matter how large the penalty might be: *see* 266, vol. 1, p. 354.

49. Where a writ of replevin is sued out for any personal property which had not been previously taken out of the plaintiff's possession, and for which the plaintiff might have brought an action of trespass or trover, the defendant shall be entitled, if the plaintiff fails in the action, to be fully indemnified against all damages sustained by the defendant, including any extra costs which he may incur in defending the action; and the bond to be taken by the Bailiff shall be conditioned not only as heretofore required in that behalf, but also to indemnify and save harmless the defendant from all loss and damage which he may sustain by reason of the seizure, and of any deterioration of the property in the meantime, in the event of its being returned, and all costs, charges, and expenses which the defendant may incur. This rule shall not apply to cases of distress for rent or damage feasant.

This is similar to C.R. 1104; *see* vol. 1, pp. 79 and 80. It enables the successful defendant to recover costs between solicitor and client which he has incurred in consequence of the replevin proceedings: Williams v. Crow, 10 A.R. 301.

The words "as heretofore required in that behalf" mean before 30th March, 1885, the date when the statute from which the rule is taken was enacted, 48 Vict., c. 13, p. 8.

For form of bond under this rule, *see* additional forms.

50. In case the writ issues without an order, the Bailiff shall take and detain the property and shall not replevy the same to the plaintiff without the order of the Judge in that behalf, but may within fourteen days from the time of his taking the same redeliver it to the defendant, unless in the meantime the plaintiff obtains and serves on the Bailiff an order directing a different disposition of the property; but this rule shall not apply in case of a distress for rent or damage feasant under Rule No. 43, sub-rule 3.

Similar to C.R. 1106.

This rule does not apply in case of distress for rent or damage feasant, because the bond takes the place of the goods which were held by the defendant merely to secure the rent or damage. As there can be no urgency about obtaining an order under this rule, the defendant should have notice of the application.

51. In case the property to be replevied, or any part thereof, is secured or concealed in any dwelling house or other building or enclosure of the defendant, or of any other person holding the same for him, and in case the Bailiff publicly demands from the owner and occupant of the premises deliverance of the property to be replevied, and in case the same is not delivered to him within twenty-four hours after such demand, he may, and if necessary shall, break open such house, building, or enclosure for the purpose of replevying such property or any part thereof, and shall make replevin according to the writ aforesaid.

Similar to C.R. 1107.

The procedure provided by that rule was, however, superseded by 56 Vict., c. 5, s. 15, under which a reasonable supposition of concealment suffices to justify the breaking, and the period of waiting is shortened to six hours in the case of a dwelling house, and forthwith in the case of any other enclosure.

The rule is an invasion of the maxim, "Every man's house is his castle": *see* Semayne's case, 1 Smith's L.C. 228; American Concentrated Meat Co. v. Hendry, W.N. (1893) 67, 82; 5 R. 331; Long v. Clarke, 69 L.T. 654.

If the property is not secured or concealed in the place broken open, the bailiff is, under the rule, a trespasser: Ratcliffe v. Burton, 3 B. & P. 229; Johnson v. Leigh, 6 Taunt. 244. Inner doors may be broken without waiting twenty-four hours if an entry is effected through the outer doors without breaking: Kerbey v. Denbey, 1 M. & W. 336; Hutchinson v. Birch, 4 Taunt. 619, even though the bailiff may have climbed over a wall into the yard of the house: Long v. Clarke, (1894) 1 Q.B. 119; 69 L.T. 654.

Rules 52-53

52. If the property to be replevied, or any part thereof, is concealed either about the person or on the premises of the defendant, or of any other person holding the same for him, and in case the Bailiff demands from the defendant or such other person deliverance thereof, and deliverance is neglected or refused, he may, and if necessary shall, search and examine the person and premises of the defendant, or of such other person, for the purpose of replevying such property or any part thereof, and shall make replevin according to the writ.

This is similar to C R. 1108.

Right of search.—Ordinarily, things upon the person cannot be taken, as the doing so might involve a breach of the peace. When the bailiff is acting under a writ of replevin, an exception is established. This rule contemplates an entry into the premises, where the goods are, without a breaking. In such a case it is neither necessary that the demand should be public nor that there should be any delay in making the search.

Any person holding the same for him.—If the goods are in the possession of a person not holding them for the defendant, the writ will not justify their taking: Great Western Railway Co. v. McEwan, 28 U.C.R. 528; Hoorigan v. Driscoll, 8 P.R. 181; Stoeser v. Springer, 7 A.R. 497.

53. The Bailiff shall return the writ at or before the return day thereof, and shall transmit annexed thereto:—

(*a*) The names of the sureties in and the date of the bond taken from the plaintiff, and the name or names of the witnesses thereto.

(*b*) The place of residence and additions of the sureties.

(*c*) The number, quantity, and quality of the articles of property replevied; and in case he has replevied only a portion of the property mentioned in the writ, and cannot replevy the residue by reason of the same having been removed or carried (*eloigned*) out of the county by the defendant, or not being in the possession of the defendant, or of any other person for him, he shall state in his return the articles which he cannot replevy, and the reason why not.

Substantially the same as C.R. 1109 and old rule 49.

Return.—The bailiff must be careful that he has obtained such a bond as will enable him to make the return here required; otherwise his action may be adjudged illegal: Heley v. Cousins, 34 U.C.R. 63.

54. If the Bailiff makes such a return of the property distrained, taken, or detained having been *eloigned*, then upon the filing of such return a writ in *withernam* shall be issued by the Clerk who issued the summons in replevin; and before executing such writ the Bailiff shall take security, as provided by Rule No. 47.

Withernam.—Substantially the same as C.R. 1110 and old rule 50.

When a writ in withernam is issued, the bailiff must again take security; but the provisions of rule 49 do not then apply. For form of writ in withernam, *see* Form No. 69. Any goods of the defendant to the value of the goods eloigned may be taken by the bailiff; but the defendant, on giving a bond with two sureties to answer to the plaintiff for the goods mentioned in the original writ, may regain possession of the goods seized in withernam. In the High Court, the plaintiff may, instead of proceeding in withernam, receive damages for the goods eloigned: Deal v. Potter, 26 U.C.R. 578; Graham v. O'Callaghan, 14 A.R. 477; Lewis v. Teale, 32 U.C.R. 108; but under rule 41 no other cause of action can be joined with replevin, and it is doubtful, therefore, whether the plaintiff could add to his claim a further claim for goods not replevied by the bailiff.

55. A copy of the writ shall be served on the defendant personally, or, if he cannot be found, by leaving the copy at his usual or last place of abode, with his wife, or some other grown person being a member of his household, or an inmate of the said place of abode.

Similar to old rule 48.

The copy is not to be served until the writ has been acted upon. *See* rule 56.

Substitutional service.—The rule authorizes substitutional service without an order, "if the defendant cannot be found."

56. The copy of the writ shall not be served upon the defendant until the Bailiff has replevied the property, or some part of it, if he cannot replevy the whole, in consequence of the defendant having removed or carried (*eloigned*) the same out of the county in which he is Bailiff, or because the same is not in the possession of the defendant, or of any other person for him.

Similar to old rule 47.

If all the property is eloigned, the writ is not to be served.

Other person for him.—*See* notes to rule 52.

Rules 57-59

57. In case it is shown by affidavit, to the satisfaction of the Judge, that service of the writ cannot be made upon the defendant in any of the modes authorized by the preceding rules, such Judge may grant leave to the plaintiff to serve the writ and statement of particulars in such manner, at such place, or upon such person for the defendant, as to him may seem proper, and may grant leave to the plaintiff to proceed, as if personal service had been effected, subject to such conditions as the Judge may impose.

Substitutional service.—This rule applies to cases when defendant has no usual or last place of abode. To obtain an order under this rule, the same material is necessary as under rule 20: *see* notes thereto and vol. 1, pp. 133-136.

58. In case a writ of replevin is issued, or in case an order is made therefor, the defendant may at any time, or from time to time, on notice to the plaintiff, apply to the Judge on affidavit or otherwise, to discharge, vary or modify the writ or order, or to stay proceedings under the writ, or for any other relief, to be specified in the notice, with respect to the return, safety, or sale of the property or any part thereof, or otherwise; and the Judge may make such order thereon as, under all the circumstances, best consists with justice between the parties.

Similar to C.R. 1101.

Motion to set aside.—This rule enables the judge to preserve the property pending the litigation, or to sell the same. It removes any doubt which might exist as to the power of the judge to set aside his own order. If the possession of the property be specially valuable to the defendant, the judge might order its return to him pending the litigation upon his giving the plaintiff security. The question whether the defendant had, in fact, taken or detained the property cannot be dealt with on this motion. That is the question to be tried in the action; and the defendant's denial of such taking or detention is no ground for setting aside the writ or order: Gilchrist v. Conger, 11 U.C.R. 197.

59. In case the defendant has been duly served with a copy of the writ and statement of particulars, then, unless the defendant has left with the Clerk within eight days after the day of service (where the service is required to be ten days before the return), or within twelve days

after the day of service (where the service is required to be fifteen days before the return), a notice in writing that he intends to dispute the claim of the plaintiff, it will be considered that he has no defence, and the plaintiff may proceed in the action in the same manner as if the defendant had appeared and had admitted the plaintiff's right to the possession of the goods, and final judgment may be entered as if by default. But the Judge may, on sufficient grounds shown, and on such terms as to costs and otherwise as he thinks just, let the defendant in to defend.

Judgment by default.—This is an entirely new provision. Formerly, judgment by default could only be signed on a special summons.

Let defendant in to defend.—The same principles would be applicable under this rule as under section 109 : *see* vol. 1, pp. 148-150.

60. In case the plaintiff becomes entitled to sign judgment by default, he shall be at liberty to sign final judgment for the sum of two dollars and costs, according to the proper scale, but shall not be entitled to recover a larger sum, except upon an assessment before a judge or jury, or upon filing the written consent of the defendant or his solicitor, and an affidavit verifying the signature to such consent.

Damages.—Similar to C. R. 1111, except as to amount.

Assessment before judge or jury.—Where the goods are promptly recovered, the damages are usually confined to the expenses of the replevin bond, because there is generally no other damage; but whatever damages have been actually sustained may be recovered, and cannot be recovered in a subsequent action : Gibbs v. Cruikshank, L. R. 8 C. P. 451.

61. The defendant may at any time, not less than six days before the day appointed for the trial, pay into Court such sum as he thinks a full satisfaction for the plaintiff's demand, together with the plaintiff's costs up to the time of such payment.

Payment into court.—Upon paying money into court, the defendant should leave with the clerk a consent, in writing, to the delivery up of the replevin bond to the plaintiff. *See* rule 62.

Rules 62-65

62. In case the defendant in an action of replevin shall pay money and costs into Court, and shall leave with the Clerk a consent in writing that the replevin bond be delivered up to be cancelled and an express waiver of all right to the property replevied, and the plaintiff accepts such money, the proceedings in the said action of replevin shall thenceforth cease and be discontinued.

Similar to old rule 45.

The defendant has to concede all the plaintiff's demands, except as to the amount of damages. The plaintiff should observe the provisions of section 126 and rules 244 and 246, *infra ; see* vol. 1, p. 178.

63. It shall not be necessary to have formal pleadings in replevin actions.

The Replevin Act, R.S.O., c. 55, s. 5, s-s. 2, contains this provision.

64. Either party may require a jury in an action of replevin, where the value of the goods sought to be recovered exceeds $20.

This is provided for by section 154, vol. 1, p. 232.

65. Where the distress is for rent, *or for any other claim for which a distress may be lawfully taken*, and the defendant succeeds in the action, if the defendant shall so require, the Judge shall, if the action has been tried without a jury, and the jury shall, if the action is tried with a jury, find the value of the goods distrained, and if the value be less than the amount of rent or otherwise of money in arrear, judgment shall be given for the amount of such value; but if the amount of the rent, or such other sum of money in arrear, be less than the value so found, judgment shall be given for the amount of such rent, or other sum of money, and may be enforced in the same manner as any other judgment of the Court.

Similar to old rule 42, except words in italics.

The value of the goods.—The defendant is not obliged to pursue this course. It is discretionary with him: Rees v. Morgan, 3 T.R. 349; Mayne on Damages, 3rd ed., 374; but the defendant must show the amount of rent and the value of the goods distrained: Sheape v. Cullpepper, 1 Lev. 255.

This rule enables a landlord without any counterclaim to get a judgment against his tenant for his rent to the value of the goods distrained. There must be a demise at a fixed rent: Hayward v. Haswell, 6 A. & E. 265; Knight v. Bennett, 3 Bing. 361. For form of judgment, *see* Form No. 70.

See R.S.O., c. 55, ss. 2 and 5, *ante*, p. 80.

66. Where the distress is for damage feasant and the defendant is entitled to judgment for a return, if the plaintiff shall so require, the Judge shall, if the action is tried without a jury, and the jury shall, if the action is tried with a jury, find the amount of the damage sustained by the defendant, and judgment shall then be given in favor of the defendant, in the alternative for a return, or for the amount of the damage so found.

Damage feasant.—*See* rule 43.

67. In all cases of replevin, other than those arising out of a seizure by way of distress, where the defendant justifies the taking and proves his case, the judgment for the defendant shall be for a return of the goods, with or without costs, together with such damages as the defendant shall have sustained, if damages are awarded.

Substantially the same as old rule 44.

Other than distress.—In cases of distress the judgment is to be in accordance with rules 65 and 66.

If damages are awarded.—The defendant could in an action upon the bond claim damages, though not awarded in the judgment: Williams v. Crow, 10 A.R. 301. The damages which may be awarded on the trial of the replevin suit to the defendant are not for the goods replevied or for the infringement of his rights thereto, but as a compensation for the expense and trouble he has undergone: Pratt v. Rutledge, 1 Salk 95.

GARNISHEE PROCEEDINGS.

68. The application, under the 178th section of the Act, may be made to the Judge, *ex parte*, and upon affidavit of the primary creditor, his solicitor, or some other person or persons aware of the facts, respectively, stating that judgment has been recovered, and when, and that it is still unsatisfied, in whole or in part, and to what amount, and that the deponent has reason to believe, and does believe that some one or more parties (naming them, or stating that he is unable to name them)

Rules 68-69

is or are within this Province, and is or are indebted to the primary debtor, and stating the nature of the debt sought to be attached, and the amount thereof, if known to the deponent, or that after careful enquiry he has been unable to ascertain the amount thereof.

Although the phraseology of this rule is very different from that of old rule 51, its provisions are substantially the same. This rule embodies what before was left to the form.

Roving garnishee order.—It is possible by virtue of this rule and section 178 to obtain a "roving garnishee order": *see* vol. 1, p. 259.

Within this province.—A bank authorized by Parliament to do business in Ontario, although its head office be out of Ontario, is deemed potentially and actually resident within the jurisdiction of Ontario for the purposes of the law as well as the transaction of business: 53 Vict., c. 31, s. 64, *et seq.* (D.); County of Wentworth v. Smith, 15 P.R. 372; but an ordinary foreign corporation, although having an agency in Ontario, is not so resident: Parker v. Odette, 16 P.R. 69, and to justify garnishee proceedings against them the primary creditor must proceed by ordinary summons and invoke the provisions of sections 91, 181, 182, and 185 of the Act: *see* vol. 1, p. 260.

For form of affidavit, *see* form 43.

For form of subsequent affidavits, *see* form 44.

For form of attaching order, *see* form 73; and of warning therein, form 73 (*a*).

69. Any person, other than the primary creditor, primary debtor, or the garnishee who wishes to avail himself of the benefit of the first sub-section of section 188 of the Act, may apply to the Judge for directions how to proceed. Upon such application, the Judge may, upon such terms as he shall think just, add any one or more persons as a party or parties to the action, either as a primary creditor or intervener, or otherwise as he may determine, and may dispose of all matters in dispute, and make such order or orders as to costs as he might have done if such person or persons had originally been parties to the action.

Interveners.—This rule for the first time provides procedure for making an intervening party, disputing the right of attachment, a party to the action. The moneys sought to be garnished are frequently trust funds. Any one of the *cestuis que trustent* could, under these provisions, be made a party as "intervener." The rights of an intervener are fully discussed in vol. 1, p. 272.

Counterclaim.—An intervener would not be able to set up a counterclaim which the primary debtor might have against the primary creditor, but might plead a primary debtor's set-off. Compare r. 28, *ante*.

Either as primary creditor or intervener.—In the event of a contest between primary creditors as to the right to the debt garnished, it would appear to be proper to add the third party as a primary creditor. Rules 69-71

70. In an action against a primary debtor and a garnishee, in case the primary creditor fails to prove his claim, or is non-suited, or judgment is rendered against him, in favor of the primary debtor, and there is a controversy between the primary debtor and the garnishee, which they both desire to have disposed of, the case shall proceed to its termination as between them, in the same way as if the primary debtor were the plaintiff in an ordinary action, and the garnishee were the defendant, and all the consequences shall follow thereafter, whatever be the state of the cause, as would ordinarily follow, and the same remedies and judgment shall be afforded and rendered in all respects as between them as there would supposing the primary creditor had not been a party to the proceedings.

Controversy between debtor and garnishee.—This rule adopts the modern principle of deciding all questions in dispute in the action while the parties are before the court.

Desire to have disposed of.—The desire of both parties need not be expressed in writing. If once expressed it cannot be withdrawn, and the court thenceforward possesses full jurisdiction to decide the controversy between primary debtor and garnishee, but it is submitted that no judgment beyond the jurisdiction of the court can be given: *see* section 74, vol. 1, p. 98, rule 114; Mead v. Creary, 32 C.P. 1.

Remedies and judgment.—The judgment would be a final adjudication: *see* vol. 1, pp. 3-5. Either party might move for a new trial. The garnishee would be subject to a judgment summons.

For form of judgment, *see* form 120.

71. Where an exemption from liability to garnishment is claimed, under the 174th and 175th sections of the Act, it shall be necessary for the primary debtor to establish the fact of such exemption.

Onus of proof.—This is a declaration of the rule which is to prevail in all division courts as to the proof of exemption. The proof must *establish* the fact of the exemption, and must therefore not only show that the debt is exempt under section 174, but that the exemption is not taken away by section 175. Ordinarily, the rule would be that the debtor would have made out a *prima facie* case on bringing himself within section 174, and the onus of proof would then have been shifted to the primary creditor to prove the facts under section 175.

Rules 72-74

72. The warning (Form 78*a*) shall be endorsed on or subjoined to the attaching order issued under section 178, and on the summons referred to in section 181 and section 185, sub-section 1.

Warning to garnishee.—The garnishee must be warned upon every attaching order and garnishee summons not to pay the debt to the primary debtor.

73. In case a debt sought to be garnished is for wages or salary, the memorandum required by section 177, showing the residence of the primary debtor and the nature of his occupation in the service of the garnishee, if he is then in such service, and whether the debt alleged or adjudged to be due was or was not incurred for board or lodging, shall be set forth in the statement of the plaintiff's claim, and copies thereof furnished to the Clerk, and endorsed upon or annexed to the summons, as required by the said section 177.

In the plaintiff's claim.—The garnishee may presume that the debtor is entitled to the exemption if such statement is not set forth in the statement of claim : *see* vol. 1, p. 257.

74. The service of the summons on the garnishee shall in all cases be made at least ten days before the return thereof, and the service on the primary debtor or debtors, ten or fifteen days (according to the places of residence of the parties to be served), before the return thereof. If the amount of the primary creditor's claim exceeds fifteen dollars, the service shall be personal, unless the Judge order otherwise ; if such claim does not exceed fifteen dollars, the service may be personal, or on his wife, or servant, or some grown person being an inmate of the dwelling house or usual place of abode, trading or dealing of the person requiring to be served.

At least ten days.—*See* notes to sections 96, 99, 111, and 183, and notes. The service of garnishee summonses is regulated by sections 183 and 186.

See also notes to sections 179 and 193 and rule 18.

The return day will now be ten and fifteen days from the service, in analogy to section 97. The amendment as to the amount of claim in which personal service is not required made by 52 Vict., c. 12, s. 9 (section 99), is now made applicable to services upon garnishees.

75. The primary debtor shall in all cases, unless service is dispensed with by the Judge, be served with the garnishee summons, and, if not served, the Judge, unless he dispenses with service, may, on such terms as to him may seem meet, adjourn the case until such service be effected.

Similar to first part of old rule 54.

Unless dispensed with.—*See* notes to sections 183 and 186, vol. 1, pp. 265, 269.

76. The Judge, in any garnishee proceeding, may order that the service need not be personal, but may be made on any person or persons to be named in the order, or in such other manner as the Judge may direct.

Similar to old rule 55.

Service need not be personal.—Reasonable attempts should first be made to effect service: *see* vol. 1, p. 133, *et seq*. The judge may prescribe in what way services may be made: *See* notes to sections 183 and 186. *See* rule 20 and notes. *See* also notes to section 179, vol. 1, p. 260.

77. Whenever in a proceeding to obtain an attachment of debts, it is claimed that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Judge may order such third person to appear and to state the nature and particulars of his claim upon such debt, and after hearing the allegations of such third person, and of any other person who by the same or any subsequent order is ordered to appear, or in case of such third person not appearing when ordered, the Judge may give such decision between all the parties as he shall consider just, and may bar the claim of such third person, either in whole or in part, or make such other order, as such Judge shall think fit, upon such terms in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Judge shall think just and reasonable.

Adverse claims.—Old rule 54 provided merely that the judge might order any other person to be made a party to the suit and served with the summons. This rule provides for all cases covered by section 197; *see* vol. 1, pp. 278-282.

Rules 77-80

May bar the claim of such third person.—The third party becomes bound to recognize the jurisdiction, and upon failure to appear may be barred. *Re* Moore v. Wallace, 13 P.R. 201. For form of summons, *see* form 126. For form of judgment, *see* forms 116 and 119. For form of execution against creditor and claimant respectively for costs, *see* forms 149 and 150.

78. Where the summons, under section 181, is to be issued from any Court other than that in which the primary creditor has obtained judgment against the primary debtor, a transcript of such judgment shall be filed with the Clerk of such first mentioned Court, previous to the issuing of the summons against the garnishee.

Similar to old rule 57.

A transcript of such judgment.—*See* section 217 and notes thereto. *See* also notes to section 181, vol. 1, pp. 305 and 263.

79. No payment made by a garnishee to a primary creditor before judgment given against the primary debtor shall discharge him from his liability, unless an order for such payment has been first obtained from the Judge.

(*a*) Where a garnishee pays money into Court, and the primary creditor does not accept in satisfaction of the amount sought to be attached the sum so paid into Court, the money shall not be paid out until after the judgment, and any costs which shall have been awarded to the garnishee shall be deducted therefrom and paid to the garnishee.

No payment.—The first part of the rule is similar to the old rule 50. The second part is new.

Payment into court.—The primary creditor must elect within forty-eight hours after receipt of notice if he accepts the payment : *see* rule 80.

80. Where the garnishee shall pay into Court, five clear days before the day appointed for the trial, the amount due from him to the judgment debtor, or an amount equal to the claim of the primary creditor, including costs, he shall not be personally liable for any costs incurred by the primary creditor.

Rule 80

(*a*) The Clerk shall forthwith give notice of the payment into Court to the primary creditor, and if he elects to accept the money so paid into Court by the garnishee, and shall send to the Clerk and to the garnishee by post, or leave with the Clerk a written notice stating such acceptance, within forty-eight hours after receipt of the notice of payment into Court, no further proceedings against the garnishee shall be taken in the said suit, and in the event of judgment being given therein in favor of the primary creditor against the primary debtor, the money so paid into Court shall, by order of the Judge, be applied upon such judgment. In case the primary creditor had already obtained judgment against the primary debtor, the said money shall, by order of the Judge, be applied upon the same.

(*b*) Upon the return day, should the amount paid into Court be not accepted, the Judge shall determine as to the liability of the garnishee to pay any further sum on account of the debt claimed to be due from him to the primary debtor, and as to the party by whom the costs of the action, or any part thereof, shall be paid, and make such order as may be in accordance with such determination,

(*c*) If the primary creditor shall not send or deliver notice to the Clerk of his acceptance of the money paid into Court, as hereinbefore provided, it shall be considered that he elects not to accept the same, but to proceed for a further sum, and the action shall proceed accordingly.

Garnishee not liable for costs.—A garnishee is not liable for costs unless he sets up an untenable defence: section 291, vol. 1, p. 275. It frequently happens that although there is a *liability* by the garnishee to the

Rules 80-82

debtor, there is no *debt*: *see* vol. 1, pp. 248, 249, 250, 251; and payment into court would in such case not discharge the garnishee: *see* vol. 1, pp. 261 and 262; Randall v. Lithgow, 12 Q.B.D. 525.

For form of judgment for costs against garnishee, *see* form 117.

Forty-eight hours after receipt.—It will be presumed that the creditor has received notice in ordinary course of post. If the creditor does not elect within the limited time, the case must proceed to trial. But if he does not reject the admission or denial of the garnishee, the latter is not bound to attend court: *see* section 188, and rule 86 (*f*).

Upon the return day.—This is, to some extent, inconsistent with section 188 and rule 86 (*f*). By reading all the provisions together, however, it would appear that the garnishee must be notified before any further amount can be recovered from him, and the trial for that purpose adjourned.

Elects not to accept same.—No specific provision is made for the communication of a failure to accept to the garnishee. If the creditor files any notice, a copy is, however, to be sent to the garnishee: rule 86 (*d*).

81. The application under section 195 shall not be made *ex parte*, but must be made upon written notice of motion, or by summons obtained from the Judge, returnable at any time and place the Judge may appoint, and calling upon the garnishee, primary creditor, or such other person or persons as the Judge, in his discretion, shall think fit. If the money has been paid over, the primary creditor or other person may be called upon by the notice of motion or summons to show cause why he should not pay the money to the primary debtor or other person applying.

See old rule 59 and notes to section 195, vol. 1, p. 276.

82. The bond to be given under section 196 shall be executed by the primary creditor, or his agent, with one or more sufficient sureties, and shall be in double the amount of the debt ordered to be paid by the garnishee, and shall be an ordinary bond to the Clerk, by his name of office, conditioned for the repayment of the money in case repayment be ordered, and such bond shall be approved of by the Clerk.

The bond to be given.—*See* notes to section 196.

The agent of the primary creditor who executes the bond should be authorized to do so under seal: Co. Litt. 486; White v. Cuyler, 6 T.R. 176; Berkeley v. Hardy, 5 B. & C. 355.

83. The bond given to the Clerk under section 196 may, by order of the Judge, be assigned by the Clerk to a garnishee, upon its being shown that the condition has been broken, by non-compliance with an order for the repayment into Court of moneys paid in by a garnishee.

Assignment of bond.—Under sub-section 2 of section 196 the bond may also be sued in the name of the clerk: *see* vol. 1, p. 278. Evidence must be given of a breach of the condition: *Re* Young, L.R. 1 P. & D. 186. The form of assignment of bond (form 66) may be changed to suit the circumstances.

84. If the primary creditor is obliged to issue execution against the garnishee, the cost of such execution and the Bailiff's fees thereon shall be levied of the garnishee.

Substantially the same as old rule 61.
For form of execution, *see* form 148.

85. When the attaching order or garnishee summons issues, the Clerk shall forthwith make an entry thereof in the debt attachment book, and so from time to time shall make an entry of each subsequent proceeding so soon as taken.

Debt attachment book.—*See* form 5. *See* also section 199, vol. 1, pp. 282 and 283.

DEFENCES IN GARNISHEE PROCEEDINGS.

86. In cases under the Act, and whether the claim of the primary creditor is or is not a judgment, the primary debtor, the garnishee, and all other parties in any way interested in or to be affected by the proceeding, shall be entitled to set up any defence, as between the primary creditor and the primary debtor, which the latter would be entitled to set up in an ordinary action, and also any such defence as between the garnishee and the primary debtor, and may also show any other just cause why the debt sought to be garnished should not be paid over or applied in or towards the satisfaction of the claim of the primary creditor.

Rule 86.

(*a*) A primary debtor or garnishee who desires to set up a statutory or other defence, or set-off, or to admit his liability, in whole or in part, for the amount claimed in such action, shall file with the Clerk the particulars of such defence, or set-off, or an admission of the amount due or owing by the primary debtor, or the garnishee, as the case may be, within eight days after service on him of the summons.

(*b*) The Clerk shall forthwith send by mail to each of the said parties to the action a copy of such defence, set-off, or admission.

(*c*) The primary creditor may file with the Clerk a notice that he admits the defence, or set-off, or accepts the admission of liability as correct.

(*d*) A copy of the notice shall be sent by the Clerk, by mail, forthwith to the garnishee.

(*e*) In the absence of any notice of defence, or set-off, from any primary debtor or garnishee, the Judge may, in his discretion, give judgment against such primary debtor or garnishee, subject to the provisions of sub-section (*a*) (*sic, quære* (*h*)) of this rule.

(*f*) In the event of the primary creditor failing to file a notice admitting or rejecting such defence, set-off, or admission of liability, the garnishee shall not be bound to attend at the trial, and the sum admitted to be due or owing by the garnishee shall be taken to be the correct amount of his liability, unless the Judge shall otherwise order, in which latter case the garnishee shall be notified by the Clerk, and shall have an opportunity of attending at a subsequent date, and of being heard before judgment is given against him.

(*g*) The costs of all notices required to be given under section 188 of the Act shall be costs in the cause, and in no case shall be payable by the garnishee, unless specially ordered by the Judge.

(*h*) If the garnishee or the primary debtor, having been duly served with summons, does not appear on the return of such summons, the Judge may proceed to hear the case and may give judgment against him in his absence, but except where an admission of liability has been filed as in the preceding part of this rule is provided, no judgment shall be given against any garnishee or primary debtor, either for want of notice of defence, or for default of appearance, without sufficient proof of the debt or amount due or owing by him as required by section 187 of the Act.

(See *In re* Johnson v. Therien, 12 P.R. 442.)

(*i*) If only some of the parties required to be served are served, the Judge may give the same judgment against those served as in ordinary cases.

All prior to sub-section (*h*) in this rule is similar to section 188, except the words "subject to the provisions of sub-section (*h*) of this rule" in sub-section (*e*). *See* vol. 1, pp. 270-273.

Must prove debt.—Sub-section (*h*) adopts the decision in *Re* Johnson v. Therien, 12 P.R. 442. The first part of old rule 56 provided that judgment might be given against the garnishee by default, but this rule was, apparently, not cited in *Re* Johnson v. Therien.

Judgment against those served.—Sub-section (*i*) is similar to the concluding clause of old rule 56. No power is given to take judgment against those served without prejudice to the rights against the others not served. *See* rule 116.

87. In the proceedings against garnishees under the consolidated rules of practice of The Supreme Court of Judicature for Ontario, rules 940 to 943 inclusive, the forms 173*b* and 152 may be used; and the same proceedings may be taken in the Division Court against the garnishee as provided in The Division Courts Act and in these rules and forms so far as applicable.

Rule 87 This is similar in substance to old rule 63. C.R. 940-943 inclusive are as follows:

Rules 940-943. When garnishee to appear before County Court Judge in cases in High Court.

940. In cases in the High Court where the amount claimed or demand claimed as due or accruing from any court, the order to appear made under rule 935, shall be for the garnishee to appear before the judge of the County Court of the county within which the garnishee resides, at some day and place within his county to be appointed in writing by such judge; and written notice thereof shall be given to the garnishee at the time of the service of the order. R.S.O., 1877, c. 50, s. 311.

Execution from County or Division Court if the garnishee does not dispute the debt.

941. If the garnishee does not forthwith pay the amount due by him, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear before the judge named in the order at the day and place appointed by such judge, then such judge, on proof of service of the order and appointment having been made two clear days previous, may make an order directing execution to issue out of the County Court or out of a Division Court, according to the amount due, and such order shall, without any previous writ or process, be sufficient authority for the clerk of either of such courts to issue execution for levying the amount due from such garnishee. R.S.O., 1877, c. 50, s. 312.

Proceedings if he disputes the debt.

942. If the garnishee disputes his liability, then such judge of the County Court may order that the judgment creditor shall be at liberty to proceed against the garnishee according to the usual practice of the County or Division Court, as the case may require, for the alleged debt or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit. R.S.O., 1877, c. 50, s. 315.

Proceedings in County Courts when amount within the jurisdiction of Division Courts.

943. In cases in the County Courts when the amount claimed as due from any garnishee is within the jurisdiction of a Division Court, the order to be made under rule 935 shall be for the garnishee to appear before the clerk of the Division Court within whose division the garnishee resides, at his office, at some day to be appointed in the said order by the judge of the County Court, and the said order shall be served on such garnishee; and if the garnishee does not forthwith pay the amount due by him, or an amount equal to the judgment debt, and does not dispute the debt due, or does not appear before the Division Court clerk named in the order at his office at the day appointed by such judge, then such judge, on proof of the service of the order having been made two clear days previous, may make an order directing execution to issue out of the Division Court of the division in which such garnishee resides according to the amount due, and such order shall, without any previous summons or process, be sufficient authority for the clerk of the said Division Court to issue execution to levy the amount due from such garnishee; and the bailiff to whom such writ of execution is directed shall be thereby authorized to levy, and shall levy, the amount mentioned in the said execution towards satisfaction of the judgment debt, together with the costs of the proceedings to be taxed and his own lawful fees; but if the garnishee disputes his liability, then such judge may order that the judgment creditor in the said County Court shall be at liberty to proceed against the garnishee, according to the practice of the said Division

Court, for the alleged debt or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit. R.S.O., 1877, c. 50, s. 316. **Rules 87-88**

The forms are (73*b*) and 152.

Service of order.—The order must be served two clear days (*see* r. 2) before the time appointed in the order.

Proceedings before clerk.—The clerk should endorse on the order issued out of the High Court, or any County Court, a memorandum either of non-attendance, admission or denial. If the garnishee either admit or deny the debt, the clerk should endorse such admission or denial upon the order and obtain the signature of the garnishee thereto. If the garnishee admits the debt or does not attend, an order is to be obtained for payment from the court out of which the order issued, and execution may then be issued thereon in the Division Court. No proof of the debt by the garnishee is necessary: Vinall v. DePass, (1892) A.C. 90.

Payment by garnishee.—The garnishee should not pay the debt until the order for payment is made (*see* vol. 1, pp. 261 and 262) unless he pays it into court. The payment in such case into court would be made into the court from which the order issued, viz., the High Court or County Court.

Denial by garnishee.—If the garnishee denies the debt, an order would have to be made that the creditor should be at liberty to proceed against the garnishee in the Division Court, and it would then be necessary for the judgment creditor to issue a summons under section 181: *see* vol. 1, p. 263. Form 70 may be used, but the heading thereof should be altered to read as follows:

In the Division Court in the County of

In the Matter of the Suit in the High Court of Justice for Ontario, Division (or County Court of the County of)

Between A.B., Plaintiff; C.D., Defendant; and E.F., Garnishee.	Judgment recovered on the day of A.D. 189 in the (High Court of Justice for Ontario, Division *or* County Court of the County of *as the case may be*). Amount unsatisfied, $

Costs of suit.—The garnishee may be ordered to pay the costs of suit occasioned by his denial: *see* C.R. 942 and 943. *See* also, s. 191, vol. 1, p. 275, and r. 80, *supra*.

88. In cases of attachment issued in garnishee proceedings, under the consolidated rules of practice of the Supreme Court of Judicature and coming within the jurisdiction of the Division Courts; the Clerk of Division Court shall enter all the proceedings (commencing with the order received by him) in the procedure book.

This is a new rule. The clerk should enter all the proceedings as a suit whether the garnishee appears or not.

Rule 89

PROCEEDINGS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

89. A party suing an executor or administrator, may charge in the summons (Form 50) that the defendant has had assets, and has wasted them, and he shall state in his particulars the amount of assets alleged to have been left by the deceased, and the manner in which the said assets have been wasted.

See old rule 64. The concluding part of the rule is new, and is taken from Eng. C.C.R., 1889, Ord. xxx., r. 2.

Particulars now required.—To form 50 must be added a statement to the following effect, according to the facts: "The plaintiff says that the deceased left assets to the amount of $, and that the defendant wasted them in the following manner: [*By applying them to his own use;* or *by not calling in money invested on a mortgage, the security of which was insufficient (giving particulars);* or *by investing moneys on personal security (giving particulars);* or *by investing money on unauthorized security (giving particulars);* or *by loaning the sum of $ to A.B., his co-executor, who has failed to return the same.*"]

Definition of devastavit.— Devastavit is defined as a mismanagement of the estate and effects of the deceased in squandering and misapplying assets contrary to the duty imposed on them for which executors or administrators shall answer out of their own pockets as far as they had or might have had assets of the deceased. An executor may pay a debt which is barred by the Statute of Limitations: Hill v. Walker, 4 K. & J. 166; Stahlsmidt v. Lett, 1 Sm. & G. 415; but not if his co-executor objects thereto: Midgley v. Midgley, (1893) 3 Ch. 282; but it is clearly his duty not to waste an estate not his own, which he is administering for the benefit of others, in satisfying demands that are equally untenable at law and in equity. If the liability is claimed under a contract not enforcible by reason of the Statute of Frauds, there is no debt or liability which he would be justified in paying: *Re* Rownson, 29 Ch.D. 358.

Deficiency of assets.—By R.S.O., c. 110, s. 32, all debts of a deceased are now payable ratably if there is insufficient to pay all in full. Paying one creditor in full would therefore be, as a general rule, an admission by the executor that he had assets sufficient to pay all creditors: Bank of British North America v. Mallory, 17 Gr. 102; Chamberlen v. Clark, 1 O.R. 135; 9 A.R. 213. If he is sued and does not defend, on the ground that assets are deficient, he will be guilty of a devastavit to the amount of the excess over the ratable share which the creditor would have been entitled to: Taylor v. Brodie, 21 Gr. 607. If he knows of the deficiency, it seems he cannot recover the excess from the creditor who received more than his proper share: Doner v. Ross, 19 Gr. 229; but if he believed there would be no deficiency, he is entitled to recover the excess back as money paid under a mistake of fact: *per* Burton, J.A., Chamberlen v. Clark, 9 A.R. 281. *See* also Taylor v. Brodie, 21 Gr. 610. If the executor is insolvent and a creditor has received from him, or from the estate, either with or without proceedings, more than his proper share, the other creditors will be entitled to a direct recovery from him of the excess: Chamberlen v. Clark, 1 O.R. 135; 9 A.R. 273; Bank of British North America v. Mallory, 17 Gr. 102. *See* also "An Executor's Defence of Law," 10 C.L.T. 277.

Advertisement for creditors.—If an executor has advertised for creditors, pursuant to R.S.O., c. 110, s. 36, and has sufficient to pay all claims of which he has notice, and pays them in full, but another creditor subsequently appears, and his claim would, if it had been known, have created a deficiency, the executor may plead his notice to creditors and distribution of the assets, and that his accounts have been properly audited by the Surrogate Court, and will, upon proving these facts, be entitled to succeed: *see* rule 99 (*a*). The creditor would not, however, be without remedy, but might compel the other creditors to refund ratably the amount which they received in excess of the amount which would have been payable to them had all the claims been known to the executor.

Proceedings on deficiency appearing.—If the executor is sued, and knows or believes the assets will be insufficient for the payment of all the claims in full, he should plead the deficiency. In the High Court, administration could then be ordered, but the Division Courts have no power to order administration. The only course to be adopted in a Division Court suit is for the creditor either to refrain from proceeding with the action and allow the executor to distribute the assets, without going to the expense of an administration suit, or, in the event of his persisting with the suit, for the judge to stay the proceedings for a limited time to enable the executor to apply for an administration order under C.R. 969. The administration order would operate as a judgment in favor of all creditors, and all debts would be paid ratably.

Foreign creditors.—The claims of creditors living out of the jurisdiction must be taken into account in ascertaining whether or not there is a deficiency: Milne v. Moore, 24 O.R. 456; *Re* Kloebe, 28 Ch.D. 175.

90. In all cases where the defendant is charged with waste in the summons, if the Judge shall be of opinion that the defendant has wasted the assets, the judgment shall be, that the debt, or damages and costs, shall be levied of the goods of the testator (if any) and if not, of the goods of the defendant to an amount not exceeding the amount so wasted; and the non-payment of the amount of the demand immediately, on the Court finding such demand to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable.

Similar to old rule 65, and English C C.R., 1889, Ord. xxx., r. 4.

91. Where an executor or administrator denies his representative character, or alleges a release to himself of the demand, whether he insists on any other ground of defence or not, and the judgment of the Court is in favor

Rules 91-92

of the plaintiff, it shall be, that the amount found to be due, and costs, shall be levied of the goods of the testator, if any, and if not, as to costs, of the goods of the defendant.

Similar to old rule 66. There does not appear to be a corresponding English rule.

Levied of the goods of the testator.—The word "deceased" should have been used instead of the word "testator" in rules 90 to 99, both inclusive. The English rules use the words *de bonis testatoris*, and the old Division Court rules use the same words, and on the revision too literal a translation has been adopted. It is important for an executor or administrator who has not in his hands assets to satisfy the debt upon which an action is brought against him to plead either a total administration or partial administration of all assets which came to his hands, or a denial that any assets came to his hands, or a deficiency of assets, or a notice to creditors, etc., as indicated in notes to rule 89, for it was said, prior to the Judicature Acts, that a judgment against an executor or administrator, whether by default or on demurrer, or upon verdict upon any plea pleaded by the executor or administrator, except *plene administravit* (he has fully administered), or admitting assets to such a sum and *riens ultra* (nothing beyond), was conclusive upon him that he had assets to satisfy such judgment: 1 Wms. Saund. 219 (*b*); but that if the executor pleaded either a general or special *plene administravit*, he was liable only for the amount of assets proved to be in his hands, and judgment against an executor on a verdict upon *plene administravit* was only an admission of assets to the extent of assets proved to be in his hands: Cousins v. Paddon, 2 C.M. & R. 558, and the Judicature Act has not altered the form of judgment in such cases: Lince v. Faircloth, 14 P.R. 253. If, therefore, judgment be given against the executor where he has omitted to plead *plene administravit*, and execution is issued against the goods of the deceased and is returned *nulla bona*, an action will then lie upon the judgment against the executor suggesting a devastavit, and in that action he cannot plead that he has no assets, and judgment will therefore go against him personally, although there may not have been any actual waste of assets: Erving v. Peters, 3 T.R. 685; 1 R.R. 794. In that case Lord Kenyon, C.J., said: "It seems extraordinary that the judgment in the first action should not be a judgment *de bonis propriis*, if the executor be liable at all events, whereas the judgment is as to the debt *de bonis testatoris*, and as to the damages *de bonis testatoris et si non de bonis propriis*"; but the principle is put by Mr. Justice Buller in these words: "The simple question is whether an executor or administrator who has no effects in his hands belonging to the testator, and will not take advantage of that defence at the proper time, shall be permitted to do it afterwards. Now, it is a universal principle of law that if a party do not avail himself of the opportunity of pleading matter in bar to the original action, he cannot afterwards plead it either in any action founded on it or in a *scire facias*."

92. Where an executor or administrator admits his representative character, and only denies the demand, if the plaintiff prove it, the judgment shall be, that the demand and costs shall be levied of the goods of the testator, if any, and if not, as to costs, of the goods of the defendant, unless the Judge otherwise orders.

Similar to old rule 67, and English C.C.R., 1889, Ord. xxx., r. 5.

93. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be, to levy the costs of proving the demand of the goods of the testator, if any, and if not, of the goods of the defendant, unless the Judge otherwise orders; and as to the whole or residue of the demand, judgment of assets when they shall have come into his hands; and the plaintiff shall pay the defendant's costs of proving the administration of assets.

Similar to old rule 68, and English C.C.R., 1889, Ord. xxx., r. 6. *See* McKibbon v. Feegan, 21 A.R. 87.

94. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does not prove the administration alleged, the judgment shall be, to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, of the goods of the testator, if any, and, if not, as to costs of the goods of the defendant; and as to the residue of the demand, if any, judgment of assets when they shall have come into his hands.

Similar to old rule 69, and English C.C.R., 1889, Ord. xxx., r. 7.

Judgment quando acciderint.—By taking judgment of assets *in futuro*, the plaintiff admits that the defendant has fully administered to that time: 2 Wms. Saund. 219, *note* (*a*). On a judgment in this form a summons may afterwards be issued under r. 97, calling upon the executor to appear touching the allegation of the receipt by him of further assets. The evidence upon this summons will be confined to proof of the executor's receiving assets at a period subsequent to the judgment: Taylor v. Holman, Buller's N.P., 169; Mara v. Quin, 6 T.R. 1.

95. Where the defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, and proves the administration alleged, the judgment shall, in case of total administration, be for assets when they shall have

Rules 95-97

come into his hands, and in case of partial administration for such amount as is shown to be in his hands of the goods of the testator, and as to the residue of the demand for such goods when they shall have come into his hands, and the plaintiff shall pay the defendant's costs of proving the administration of assets, unless the Judge shall otherwise order.

Similar to old rule 70. The English C.C.R., 1889, Ord. xxx., r. 8, provides only for judgment *quando acciderint*.

Costs.—When judgment is given against an executor or administrator for assets when they shall have come into his hands, and he has not failed in any defence he has set up, he cannot be made liable personally for costs, but should obtain his costs (if any) from the plaintiff. The plaintiff will be entitled to judgment for such costs as were necessarily incurred in obtaining judgment, to be paid out of the assets of the debtor when they shall have come to the hands of the executor or administrator.

96. Where a defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, but does not prove the administration alleged, and has not established any other ground of defence, the judgment shall be, to levy the amount of the demand, if so much assets is shown to have come to the defendant's hands, or so much as is shown to have come to them, and costs, of the goods of the testator, if any, and if not, as to costs, of the goods of the defendant; and as to the residue of the demand, if any, judgment of assets when they shall have come into his hands.

Similar to old rule 71, and English C.C.R., 1889, Ord. xxx., r. 9.

97. Where judgment has been given against an executor or administrator, that the amount be levied upon assets of the deceased, when they shall have come into his hands, the plaintiff or his personal representative, may issue a summons (Form No. 53), and if it shall appear that assets have come to the hands of the executor or administrator since the judgment, the Judge may order that the debt, damages and costs be levied of the goods of the testator, if any, and if not, as to the costs, of the goods of the defendant, provided that it shall be com-

petent for the party applying, to charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in rule 89, and the provisions of rule 90, shall apply to such inquiry; and the Judge may, if it appears that the party charged has wasted the assets, direct a levy to be made, as to the debt and costs of the goods of the testator, if any, and if not, of the goods of the defendant.

See old rule 72, and English C.C.R., 1889, Ord. xxx., r. 10.

Quando acciderint.—*See* notes to rule 94.

Has wasted the assets.—(*See* notes to rule 98.) In charging a devastavit of assets which have been received since the judgment, it is necessary for the plaintiff to give particulars of the assets alleged to have been received, and of the manner in which they have been wasted. If it appear that the executor or administrator has received some assets, but that the same are insufficient to satisfy the judgment, the judgment will be for the plaintiff as to the assets received, and *quando acciderint* as to the residue of the debt: Williams on Executors, 9th ed., 1871.

98. Where a defendant admits his representative character and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into Court, subject to the rules relating to payment into Court, in other cases.

Similar to old rule 73, and English C.C.R., 1889, Ord. xxx., r. 11.

Payment into court.—The rule is expressed in the imperative, but it is not intended that a failure to pay into court shall render the defendant liable, except to execution in the ordinary way. The "rules relating to payment into court in other cases" consist of section 125 of the Act (*see* vol. 1, p. 176), and rules 171, 244, 245, and 246. Under section 125 it is necessary for the defendant to pay the costs to the time of making the payment. If the executor should not pay into court in accordance with this rule, he would not be allowed any additional costs on passing his accounts.

99. In actions against executors and administrators, for which provision is not hereinbefore specially made, if the defendant fails as to any of his defences, the judgment shall be for the plaintiff, as to his costs of disproving such defence, and such costs shall be levied of the goods of the testator, if any, and if not, of the goods of the defendant, unless the Judge otherwise orders.

Rules 99-100

(*a*) In case an executor or administrator pleads his notice to creditors and distribution of assets, he must give notice of such defence, and that there has been a proper audit of the accounts of his administration.

The first part of this rule is similar to old rule 74, and English C.C.R., 1889, rule 12.

Notice to creditors.—Sub-section (*a*) is new, and has no counterpart in the English rules. A proper notice to creditors is one such as would be inserted by the High Court in an administration action. The advertisement should be inserted in one or more newspapers at or near the place or places where the deceased lived or carried on business, and if there is reasonable ground for supposing there are foreign creditors a notice should be advertised in the foreign country also: Wood v. Weightman, L. R. 13 Eq. 434; Newton v. Sherry, 1 C.P.D. 246; *Re* Bracken, 43 Ch.D. 1; Daniels' Ch. Pr., 6th ed., 1014. It is not necessary to insert the advertisement in the *Ontario Gazette*: *Re* Cameron, Mason v. Cameron, 15 P.R. 272.

100. In actions by executors or administrators, if the plaintiff fail, the costs shall, unless the Judge shall otherwise order, be awarded in favor of the defendant, and shall be levied of such goods as the Judge shall direct.

(*a*) If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, it shall be stated in the particulars of claim in what capacity the plaintiff sues or the defendant is sued.

(*b*) Trustees, executors or administrators may sue and be sued on behalf of, or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Judge may, at any stage of the proceedings, order any of such persons to be made parties to the action, either in addition to, or in lieu of, the previously existing parties thereto.

(*c*) Claims by or against an executor or administrator, as such, may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

The first part of the rule is similar to old rule 75, except that under the former rule the costs were to be levied of the goods of the deceased; now the judge is to direct of what goods they are to be levied. Executors or administrators instituting actions are subject to the same rules as to costs as they would be if they were suing in their own right: Daniels' Ch. Pr., 6th ed., 1175. In most cases it will be proper to order that the costs should be levied of the goods of the deceased, if any, and, if not, of the goods of the defendant.

Representative capacity.—Under this rule it will be necessary where an executor or administrator, a trustee representing property or estate, or an assignee in insolvency is suing or is being sued, that the capacity in which he is suing or being sued should be stated in the particulars. The rule is taken from Ord. v., r. 5, of the English C.C.R., 1889. *See* also C.R. 224 A statement of the representative capacity in which a plaintiff sues cannot be supplied in plaintiff's affidavit on a motion: Hynes v. Fisher, 4 O.R. 78.

Cestuis que trustent.—Sub-section (*b*) of this rule is similar to C.R. 309; *see* Holmested & Langton, 325 and 328.

Joinder of claim.—Sub-section (*c*) is similar to C.R. 344. Such joinder of claim was not possible under the former practice, and difficulties arose in deciding whether the executor should be proceeded against in his representative capacity or personally. Where the testator was indebted to the plaintiff, and after his death the executor has become indebted to the same creditor, the two claims should be joined in the same action: Johnson v. Burgess, 47 L.J. Ch. 552. The grounds of the claim should be separately stated in the particulars, and the relief which he claims in respect of each claim should be stated separately. Where a plaintiff is suing in his personal capacity, the defendant cannot counterclaim against him for debt due by him as executor: Macdonald v. Carrington, 4 C.P.D. 28.

Defences and Confessions.

101. In any case where no dispute is entered as to a portion of a claim sued in a Division Court, or where a portion of the claim is admitted by the defendant, the plaintiff may, at his option, proceed to judgment and execution for such portion without prejudice to his right to recover for the remainder of the claim.

Rules 101-102

(*a*) Where the defendant's notice of defence disputes the claim in part only, or admits a portion of the claim, the Clerk shall forthwith notify the plaintiff thereof in the manner provided by rule 162, and require him forthwith to state in writing whether he is willing to take judgment for the portion so admitted, or as to which no dispute is made, and unless the plaintiff, within forty-eight hours after the receipt of such notice, notifies the Clerk in writing that he is content to take judgment for such portion, it will be assumed that he intends to proceed for the remainder of the claim, and the case will be entered for trial accordingly. (See *post* rule 166.)

The first part of this rule is similar to the amendment made to the Act in 1893: 56 Vict., c. 15, s. 3.

The second part of the rule merely enables the plaintiff to discontinue as to the portion not admitted. It is difficult to see why his right to discontinue should have been confined to forty-eight hours after receipt of notice: *see* rule 252. If the plaintiff fails to notify the clerk that he accepts the admission, no notice need be sent to the defendant under rule 166. In like manner, if he notifies the clerk that he is willing to take judgment for the portion admitted, there is no rule requiring the clerk to notify the defendant thereof, nor is it necessary for the plaintiff to notify the defendant of the discontinuance, as it would be under rule 252. It is only where the plaintiff notifies the clerk of his intention to proceed, which is an entirely unnecessary notice, that the defendant is to be notified, under rule 166, of such intention. *See* also rule 80 (*a*) and notes thereto.

The notice to the plaintiff, if sent through the post, should be in a registered letter: rule 169.

Confession Before Action.

102. Every confession or acknowledgment of debt, taken before suit commenced, must show therein, or by statement thereto attached at the time of the taking thereof, the particulars of the claim, for which it is given, with the same fulness and certainty as would be required in proceedings by "special summons"; and unless application for judgment on such confession be made to the Judge within three calendar months next after the

same is taken, or at the sittings of the Court next after the expiration of such period, no execution shall be issued on the judgment to be rendered, without an affidavit by the plaintiff or his agent, that the sum confessed, or some and what part thereof, remains justly due; and applications for judgment shall be made at a sitting of the Court for the division wherein the confession was taken, or to the Judge, elsewhere.

This is similar to old rule 131, except the concluding words, "Or to the judge, elsewhere."

Fulness and certainty.—*See* section 109, vol. 1, p. 148.

Judgment upon confession.—The rule now authorizes the judge to give judgment upon the confession otherwise than at a sitting of the court. The view was expressed in vol. 1, p. 288, that a confession of judgment was not a confession of judgment *cognovit actionem*, or warrant of attorney to confess judgment within R.S.O., 124; but in Parke v. Willcock, Feb. 16th, 1893 (not reported), it was held that such a confession came within the express terms of that statute, and was void as against creditors when in contravention thereof.

Notice of Admission of Part.

103. With a view to save unnecessary expense in proof, the defendant or plaintiff shall be at liberty to give the opposite party a notice (Form 19), in writing, that he will admit, on the trial of the cause, any part of the claim, counterclaim, or set-off, or any facts which would otherwise require proof; and after such notice given, the plaintiff or defendant shall not be allowed any expense subsequently incurred for the purpose of such proof: the notice shall be served on the plaintiff or defendant, or left at his usual place of abode, or, if he be not resident within the division, be left with the Clerk of the Court for him, at least five days before the day appointed for the trial or hearing.

This is similar to old rule 132, except that under that rule the time was six days.

At least five days.—This means five clear days: vol. 1, pp. 176 and 230; Rumohr v. Marks, 3 C.L.T., p. 31.

Rules 104-107

104. A defendant giving notice of set-off or other statutory defence, or paying money into Court, or pleading a tender or counterclaim, shall be deemed to have sufficiently given the Clerk notice of disputing the plaintiff's claim within the meaning of the 109th section of the Act.

This is substantially similar to old rule 20, except that the words "or counterclaim" are now inserted. The effect of the rule is that judgment by default cannot be signed against a defendant although he admits the claim, or part thereof, if he pays money into court or pleads a tender or set-off or counterclaim thereto. A plea of tender would not, however, be proper unless the money was paid into court pursuant to section 122: *see* vol. 1, p. 171. Notice must be given to the plaintiff of every such defence: *see* rules 162 and 168; by registered letter or personally: rule 169.

COUNTERCLAIM.

105. A defendant in an action may set up by way of counterclaim, against the claim of the plaintiff, any right or claim whether the same sound in damages or not.

This is similar to the first part of C.R. 373. What is really a set-off—that is, a debt due by the plaintiff to the defendant for which the defendant might have maintained an action at the time the plaintiff commenced his action—should be pleaded as such: Cutler v. Morse, 12 P.R. 594. If the debt arose after the issue of the summons, it must be set up by way of counterclaim: Chamberlain v. Chamberlin, 11 P.R. 501.

106. A counterclaim, not involving matter beyond the jurisdiction of the Court, shall have the same effect as a statement of claim in a cross-action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross-claim.

This is similar to C.R. 373 (*a*), except the words, "not involving matter beyond the jurisdiction of the court." Where the counterclaim involves matter beyond the jurisdiction of the court, the practice laid down in section 74 must be followed. *See* also R.S.O., c. 44, s. 158; vol. 1, pp. 98 and 99. *See* also rule 114. The requisites of a valid counterclaim will be found set forth in vol. 1, pp. 96, 97, and 98.

107. Where a defendant sets up a counterclaim, if the plaintiff or any other person named as party to such counterclaim, contends that the claim thereby raised, ought not to be disposed of by way of counterclaim, but

in an independent action, he may at any time before or at the sittings, apply to the Judge for an order that such counterclaim may be excluded; and the Judge may, on the hearing of such application, make such order as shall be just.

This is similar to C.R. 374. Whether a counterclaim is to be allowed or disallowed is a matter of discretion, to be exercised upon consideration of all the circumstances, including rights involved in the counterclaim and the question of delay and convenience of trial: Canadian Securities Co. v. Prentiss, 9 P.R. 329. For instances of counterclaim allowed and disallowed, *see* Holmested & Langton, 411-414.

108. In any case of counterclaim, or where any incidental claim arises at the trial, if the Judge thinks that such claim can be better disposed of by an independent action, he may order such claim to be excluded, whether any application for that purpose be made to him or not.

This rule allows the judge to exercise his discretion against trying the counterclaim, although both parties are willing that the same should be tried. It is submitted that the discretion should not be exercised except in the plainest cases. *See* vol. 1, pp. 5, 241, 254, and 265.

109. Where, in any action, a set-off or counterclaim is established against the plaintiff's claim, the Judge may, if the balance is in favor of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case, as provided by sections 74 and 130 of the Act.

This rule, except the concluding words, "as provided by sections 74 and 130 of the Act," is similar to C.R. 375. Although the effect of establishing a counterclaim is the same as the obtaining of cross-judgment, it is not necessary, under this rule, that a separate judgment be entered for the plaintiff and defendant respectively on the claim and counterclaim, but the balance may be struck. This does not affect the question of costs, which, in the absence of any order, would follow the event under section 207, and the plaintiff would be entitled to the costs of the claim, and the defendant to the costs of the counterclaim: *see* Canadian Pacific Railway Co. v. Grant, 11 P.R. 208; Baines v. Bromley, 6 Q.B.D. 695.

Section 74.—The concluding words have reference to the restriction contained in section 74, that no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon a counterclaim.

Section 130 refers to a set-off when the amount due the defendant exceeds the amount claimed by the plaintiff. In such a case the plaintiff may either be non-suited or an amount sufficient to satisfy his claim may be applied thereon, but the adjudication is no bar to the recovery by the defendant of the residue of the set-off: *see* vol. 1, pp. 98 and 198.

Rules 110-112

110. Where in any action a counterclaim is made, it shall be a matter of discretion for the Judge whether the judgment shall be entered for so much for the plaintiff on the claim, and for so much for the defendant on the counterclaim, or whether it shall be entered for the balance.

For balance.—*See* C.R. 375. It is immaterial which way the judgment is entered, as the cross-judgments would, in any event, be set-off. *See* rule 144.

111. If, in any case in which the defendant sets up a counterclaim or set-off, the action of the plaintiff is stayed, discontinued or dismissed, the counterclaim or set-off may, nevertheless, be proceeded with.

Discontinued or dismissed.—This rule adopts the law as to counterclaim laid down in McGowan v. Middleton, 11 Q.B.D. 464. That decision is founded upon the principle that a counterclaim is a cross-action, and that the discontinuance by the plaintiff of his action could not affect the cross-action by the defendant. A set-off was always a defence, and either reduced the plaintiff's claim in the action *pro tanto* or entirely defeated it. The rule now gives the defendant the same benefit from a set-off as from a counterclaim, and he still retains the right of making the plaintiff pay the entire costs of the action by reason of his set-off being a defence and not merely a cross-claim.

112. Where an action is brought, or a defendant in his statement of defence seeks by way of counterclaim, to recover specific property, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Judge, upon being satisfied by affidavit or otherwise of the existence of such lien or security, may order that the party seeking to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Judge may direct, and that upon such payment into Court being made, the property be given up to the party seeking to recover it.

This is similar to C.R. 1136 and English C.C.R., 1889, Ord. xii., r. 6. **Rules 112-113**

The sum for which the lien is claimed must be brought into court, though it exceeds the value of the property : Gebruder Naf v. Ploton, 25 Q.B.D. 13.

JUDGMENT ON COUNTERCLAIM, WHERE PLAINTIFF DOES NOT APPEAR.

113. If, when a trial is called on, the plaintiff does not appear, and the defendant has given notice of a counterclaim, not involving matter beyond the jurisdiction of the Court, he may prove such counterclaim, so far as the burden of proof lies upon him, and have judgment accordingly; provided that any judgment obtained under this rule may be set aside, upon the application of the plaintiff, in like manner as a judgment obtained under sections 109 or 117 of the Act.

Section 110 enables judgment to be given in favor of a plaintiff who appears in court and the defendant does not appear, without further proof, provided the plaintiff has been served with a special summons and particulars of the plaintiff's claim or demand, as required by section 109: *see* vol. 1, p. 150. Where the proceeding has not been commenced by special summons, the judge is to proceed to the hearing or trial on the part of the plaintiff only; but the judge may, except in tort or trespass, in case of personal service of the summons and of detailed particulars of the plaintiff's claim, in his discretion, give judgment without further proof: *see* section 117, vol. 1, pp. 166 and 167. If the plaintiff should not appear and no counterclaim has been filed, the judge would simply non-suit, under section 114 : *see* vol. 1, pp. 162 and 163.

Where counterclaim set up.—Rule 113 is taken from C.R. 673 ; *see* also C.R. 672. The rule does not provide specifically for a set-off, but it is submitted that under rule 111, *supra*, a set-off might also be proceeded with on dismissal of the action.

Judgment may be set aside.—It is provided that judgment obtained upon non-appearance of the plaintiff may be set aside under section 109. The rule treats such a judgment as one obtained by default, which may be set aside without a formal application for a new trial. A judgment obtained under section 117 of the Act can, apparently, only be set aside upon an application for a new trial: *see* vol. 1, p. 167 ; and the application would have to be made within fourteen days after trial : section 145, vol. 1, p. 211 ; *Re* Foley v. Morran, 11 P.R. 316 ; Bland v. Rivers, 19 O.R. 407. If the sum in dispute upon the counterclaim exceeds $100, and was within the jurisdiction of the court, an appeal would probably lie under section 148. Under C.R. 795, a verdict or judgment, where one party does not appear at the trial, may be set aside by a judge in court, or by the judge at the sittings, without any application for a new trial, and the intention of this rule seems to have been to adopt the same practice.

Rules 114-115

RULE IN CASES OF DEFENCE OR COUNTERCLAIM IN EXCESS OF JURISDICTION.

114. Where, in any proceeding before a Division Court, any defence or counterclaim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counterclaim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy, so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counterclaim.

This is identical with section 74 of the Act. *See* vol. 1, pp. 98 and 99. *See* also rule 127.

115. In case the defendant desires to avail himself of the law of set-off, or counterclaim, or of the Statute of Limitations, or of any defence under any other statute having the force of law in this Province, he shall, not less than six days before the day appointed for the trial, give notice thereof in writing to the plaintiff, or leave the same for him at his usual place of abode, if living within the division, or if living without the division, shall deliver the same to the Clerk of the Court in which the action is to be tried; and in case of set-off or counterclaim, he shall deliver to the Clerk a copy of the particulars of such set-off, or counterclaim, to be kept with the papers in the cause, and also a copy for the plaintiff, if his usual place of abode is not within the division; and the Clerk shall forthwith give to such plaintiff a notice of such set-off, or counterclaim, by mailing the same to him in a letter duly registered, addressed to his usual place of abode or business, according to the form 195, together with one of the copies of the particulars of such set-off or counterclaim; provided that in case of non-compliance with this rule the Judge may, on such terms as he shall think fit, adjourn the trial of the action to enable the defendant to

give such notice, or may in his discretion, allow such notice to be given and the trial of the action to proceed at once.

The first part of this rule is similar to section 128. *See* vol. 1, p. 179.

Not less than six days.—This means six clear days. There is no uniformity in the rules as to the times when analogous steps are to be taken in different classes of actions. Under section 188 and rule 86, in garnishee cases, a defence of set-off or admission must be filed within eight days after service of the summons, and it is not necessary that the primary creditor should be served by the defendant or garnishee therewith. This rule applies to a set-off, counterclaim, or statutory defence in all cases except garnishee proceedings. It probably also applies to counterclaim in garnishee proceedings. A counterclaim, therefore, must, in all cases, be served upon the plaintiff if he resides within the division, or a copy must be left for him with the clerk if he resides without the division. A set-off must be served in like manner unless it is a garnishee proceeding, when it is sufficient if the particulars are filed with the clerk, but they must be filed within the time limited by section 188 and rule 86.

Forthwith give notice.—*See* vol. 1, p. 16.

Letter duly registered.—It is necessary for the plaintiff, on entering a claim, and the defendant, on giving notice of set-off, counterclaim, or other defence, to leave his address, or that of his solicitor or agent, with the clerk, and the mailing of any notice to such address is sufficient service. *See* rule 241.

Judge may adjourn trial.—Under section 128 of the Act, it was necessary that notice of statutory defence or of set-off should be given within the time there limited, and no power was conferred upon the judge of extending the time. The judge will now have power to allow any statutory defence, set-off, or counterclaim to be set up, notwithstanding the notice may not be given in time.

Quære.—Whether such power extends to garnishee proceedings?

JUDGMENTS AND EXECUTIONS.

Special Summons—Several Defendants.

116. In case there are several defendants, and all of them have not been served with a special summons, then unless the plaintiff is content to take judgment against those served only, judgment cannot be entered by the Clerk on his behalf, but the plaintiff will have to proceed to a hearing before the Judge as in ordinary cases.

Similar to old rule 22.

All defendants not served.—By rule 120, judgment may be entered against non-defending defendants without prejudice to the rights of the plaintiff against those defending. That rule is in accordance with modern ideas. The retention of this rule is hardly consistent therewith. No judgment can, according to this rule, be entered against any defendant until all the defendants have been served and have either defended or made default, unless the plaintiff abandons against those not served.

Hearing as in ordinary cases.—No provision is made for judgment before all the defendants are served, unless the plaintiff abandons against those not served.

Rules 117-118

117. In case the notice required by the 109th section of the Act has not been given by a sole defendant, or by one or more of several defendants (and the plaintiff is willing to take judgment against those only), and leave to dispute the plaintiff's claim has not been given by the Judge, the Clerk, after receiving a return of the "*special summons*," with the proper affidavit of service, may, on the twelfth day after the service of the summons, where the return day is the eleventh day after service, and on the seventeenth day, where the sixteenth day after the day of service is the return day of such summons, or at any time within one month after such return day, enter judgment against the defendant or defendants so served as aforesaid, for the claim, or so much thereof as has not been disputed, without prejudice to the plaintiff's right to recover for the remainder of the claim.

Similar to old rule 23.

And plaintiff is willing to take judgment against those only.—These words are inconsistent with rule 120. They should be struck out.

Or so much as has not been disputed.—The concluding clause of the rule is similar to 56 Vict., c. 15, s. 3. Until 1893, if the defendant disputed part only, the plaintiff had either to be content with judgment for such part, or proceed in the ordinary way. There could, up to that time, be but one judgment; now there may be two or more.

118. In actions commenced by special summons, where there are more defendants than one, and some of them have been served with process, but have not given notice disputing the plaintiff's claim, and other or others of them have not been served, but have given a confession of the debt, the Clerk shall produce or transmit the confession duly proved to the Judge for his order, and when the Judge's order shall be procured, the Clerk may enter judgment within one month after the return of the summons against all the defendants for the amount claimed in the particulars, provided that the defendants who have confessed shall have acknowledged the same amount by their confession, and such judgment may be in the Form No. 81, and it shall not be in the

power of the plaintiff to elect either to proceed on the confession against some of the defendants, or to obtain final judgment against those defendants who have not confessed, but the judgment shall be entered against all the defendants jointly.

Similar to old rule 26.

Joint judgment.—This rule provides for a failure to dispute by those served, and a confession by those not served of the exact amount claimed. Judgment must be joint.

119. In any action brought by special summons against several defendants, if all the defendants have not been served upon the same day, and no notice of defence has been entered by the defendant or defendants first served, the Clerk may immediately after the expiration of the return day, in the case of each defendant, enter a minute in the procedure book, stating the facts of service and of no defence; and if no defence has been entered by any of said defendants, the Clerk may, immediately after the time has expired in which the defendant last served might have entered such defence, sign final judgment against all the defendants.

Similar to old rule 27.

Minuting defendant.—As the time for each defendant to dispute expires, the action is noted as confessed by him; but no judgment can be entered against any until all have been served, except those who have confessed judgment, and the time has expired against all who have not disputed or confessed.

120. Where there are several defendants in an action commenced by special summons, under section 109 of the Act, and one or more of defendants has or have given notice disputing the claim of the plaintiff, and another or others of them have not given such notice, the plaintiff may have final judgment entered by the Clerk against the latter, and may cause execution to be issued upon such judgment; without prejudice to his right to proceed with his action against such of the defendants as have given the notice.

See old rule 28. This rule is similar to C.R. 706, and changes the former practice.

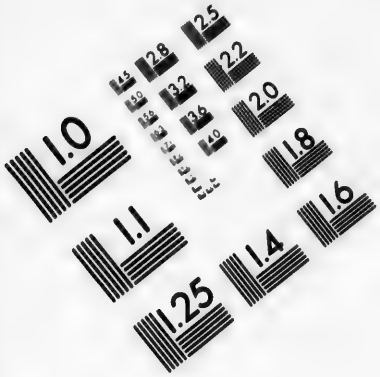
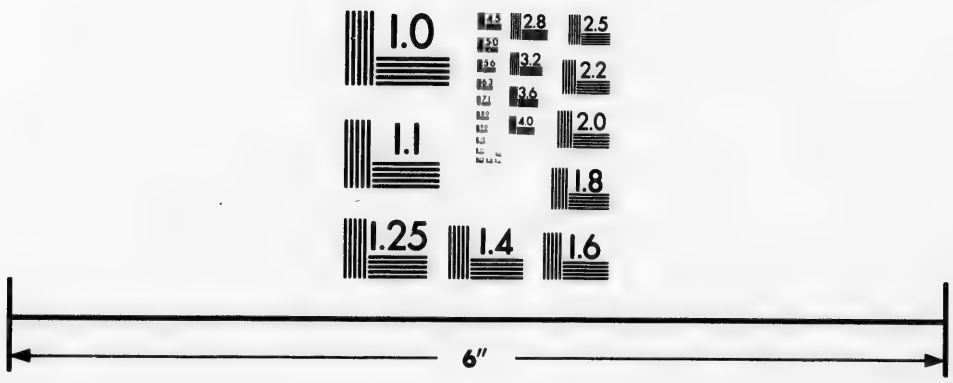
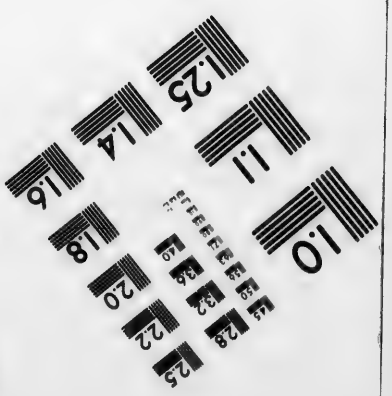




IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Rules 121-123

121. Any defendant who has been minuted as aforesaid may be let in to defend by the Judge on sufficient grounds shown.

Let in to defend.—Similar to old rule 29. *See* vol. 1, p. 148. Less might probably be required to allow a defendant in to defend who has merely been minuted than to set aside a judgment, but the defendant should show what facts he relies on for a defence. Mere guesswork is insufficient: Merchants National Bank of Chicago v. Ontario Coal Co., 16 P.R. 87. An affidavit of merit cannot be contradicted: Wooster Coal Co. v. Nelson, 4 P.R. 343; Southwick v. Hare, 15 P.R. 222, p. 230.

122. In case the defendant has given a confession or acknowledgment of debt, and has not put in the notice disputing the plaintiff's claim, the plaintiff may either proceed on the confession, as in ordinary cases, or may obtain final judgment under the 109th section of the Act, as he may elect.

Similar to old rule 30.

As he may elect.—If the defendants, who have confessed, have not been served, a joint judgment must be entered under rule 118. If they have been served, the plaintiff will avoid any question of judgment being a preference and void under R.S.O., c. 124, if he takes judgment under section 109.

123. In case judgment be not entered by default, on a special summons, within one month after the return day thereof, the Clerk shall not enter it afterwards, without an order from the Judge.

(*a*) When judgment is given against a defendant by the Judge, pursuant to section 110, immediate notice thereof shall be given by the Clerk by letter or postal card, to the defendant.

See old rule 31.

Without an order.—The former rule required an alias summons to be issued and served. This will now be unnecessary, and an order may be obtained from the judge. It would seem that judgment might also be given under section 110: *see* vol. 1, p. 150.

Immediate notice thereof.—Where a special summons is issued, if the defendant makes default and the clerk signs judgment, no notice need be given the defendant. If he disputes and defends at court, no notice need be given of judgment. If he do not appear at court, and the judge enters judgment, notice is necessary. The reason of the rule is hard to find.

By postal card.—The clerk must be careful to be strictly accurate if he sends a card. If he made any false statement therein, he might be subjected to an action for libel: Whitfield v. South-Eastern Railway Co., E., B. & E. 115; *see* Green v. Minnes, 22 O.R. 177.

124. Where, under the provisions of the Act, a writ of execution is required to be executed out of the division, but within the county, the writ may be directed by name of office to the Bailiff of any of the Division Courts in the county, but shall not be issued to the Bailiff in another county. The returns required to be made under sections 103 and 104 must be made to the Clerk by whom the process or document has been issued.

Similar to old rule 34. The rights and liabilities of a bailiff of another Division Court than that of the court from which the process issued are set forth in sections 103 and 104. *See* vol. 1, pp. 128 and 139.

Judgments.

125. Every judgment and order of the Court shall be entered by the Clerk in the procedure book, according to the forms 77 to 131 inclusive, or to the like effect; and when any order is made for the payment of any debt, damages, costs, or other sum of money, the same shall be payable at the office of the Clerk, at the expiration of fifteen days from the rendering of judgment, unless the Judge otherwise orders, but where judgment is signed by the Clerk under sections 109 or 111 of the Act, execution may issue forthwith.

This rule is similar to old rule 149. *See* also old rule 32. The terms of this rule had apparently been overlooked, and, in 1889, the limitation of fifteen days was re-enacted by the Legislature: *see* s. 145, vol. 1, pp. 211 and 212. It is important to bear in mind that, unless the judge otherwise orders, no sum is payable under an order of the Division Court until fifteen days after the decision is rendered. Interest would not run until that time, and execution could not be issued.

Rendering of judgment.—The words in 52 Vict., c. 12, s. 16, are "*entering* of such judgment."

126. After an award has been made, and with an affidavit of the due execution thereof is filed under the Act, unless the Judge otherwise orders, the Clerk shall forthwith enter judgment on such award, and shall, at the request of the party entitled thereto, issue execution thereon, at such time and in such manner as upon an ordinary judgment of the Court.

Rules 126-128

Similar to old rule 150. *See* sections 200-202, vol. 1, pp. 283-286.

Issue execution.—Execution could not be issued until fifteen days from the entering of judgment: 52 Vict., c. 12, s. 16. *See* section 145, vol. 1, p. 211. *See* also rule 125.

127. When judgment is given for the defendant on a set-off or counterclaim, he will be entitled to issue execution and to take proceedings as in ordinary cases for the recovery of the balance of his set-off or counterclaim, if such balance does not exceed a sum within the jurisdiction of the Court, or if the defendant files with the Clerk a consent in writing to abandon such excess.

See old rule 152.

Balance within jurisdiction.—The old rule provided that execution might issue for balance of set-off if balance did not exceed $100, unless the defendant abandoned the excess over $100. If the set-off is now for an amount ascertained by signature of defendant, judgment might be given for defendant for the balance up to $200 if he abandoned any excess.

Consent in writing.—If balance exceeds the jurisdiction, the consent in writing to the abandonment of excess is a condition precedent to granting relief to defendant beyond the defeat of the plaintiff's claim *See* section 74, rule 114, vol. 1, p. 98. The court must hold its hand so soon as the plaintiff's claim is equalled by set-off or counterclaim unless the balance then due is within the jurisdiction: Davis v. Flagstaff Silver Mining Co., 3 C.P.D. 228.

128. Where, under section 147 of the Act, the Judge suspends or stays any judgment, order, or execution, given, made, or issued in the action, and orders the same to be paid by instalments, such instalments shall be payable at such periods as the order directs: and if no period be mentioned, the first shall become due on the 28th day from the day of making the order, and every successive instalment shall become due at a like period of 28 days from the day of the previous instalments becoming due, and such instalments shall be paid to the Clerk of the Court.

Monthly instalments.—This rule is taken from Eng. C.C.R., 1889, Ord. xxiii., r. 8 (*a*). It would seem that it would have been more convenient to have provided for the expiration of a calendar month between each payment. *See* form of order, additional forms.

Judgment where Defence only for Part.

129. Where a motion has been made for judgment, under section 111, and it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, which is admitted to be due, the Clerk shall, by the order of the Judge, at the request of the plaintiff, forthwith enter final judgment for such part thereof as the defence does not apply to, or as is admitted to be due.

By order of the judge.—Under 56 Vict., c. 15, s. 3, and rule 117, an order of the judge is not necessary if it appears in the defence that it applies only to part. If that fact appears first on motion for judgment, an order of the judge is requisite. *See* section 111, sub-section 4, vol. 1, pp. 153 and 160. The order may be made before the motion is finally disposed of.

Motion for Judgment.

130. Where the amount of the claim of debt sought to be recovered in an action exceeds $40, and the Judge has made an order empowering the Clerk to sign final judgment, under section 111 of the Act, execution may be issued thereon, at the instance of the plaintiff, at any time thereafter.

(*a*) The application of a plaintiff shall be by notice by the plaintiff, his solicitor or agent, to be served upon the defendant, and no costs in respect of such application shall be taxed in the cause, except for service when made by the bailiff.

Execution may issue.—Rule 125 authorizes execution to issue forthwith.

Only bailiff's costs allowed.—All services of papers must be made by the bailiff, or no fees will be allowed. It is possible that on such a motion the provisions of rule 24[illegible] might be invoked, and the delivery or mailing of a notice of motion, as provided in that rule, might be considered sufficient service.

131. Where final judgment has been signed by the Clerk under section 109, execution may issue forthwith.

This is a repetition of the concluding clause of rule 125.

132. All executions and warrants shall be printed on half sheets of foolscap paper in order to afford space for the endorsement of a schedule of property seized and other memoranda proper for the Bailiff to enter thereon.

Foolscap paper.—The regulation size is 8 x 13 inches.

Rule 133

THE CREDITORS' RELIEF ACT.

133. Where any Division Court judgment or execution has been, or shall hereafter be filed with any Sheriff under the Creditors' Relief Act, or a certificate for any claim within the jurisdiction of the Division Court, and the same is not paid in full, and the Sheriff is unable to make the money thereon, the creditor may obtain a return thereof from the Sheriff according to the facts, and file the same with the Clerk of the Division Court, in which the judgment was recovered, or in the place where the cause of action arose, or the debtor (*or* one of the debtors, if more than one) resided, and the Clerk of the Division Court shall enter the same in the procedure book of the Court, and it shall thereupon become a judgment of the said Court, for the unpaid balance due thereon, as appearing by the Sheriff's return, and the claim may be enforced in the same manner as any other judgment of the Division Court.

(a) Where a claim is not paid in full, and the Sheriff's return under the Creditors' Relief Act relates to a judgment or execution of the Division Court, and is filed with the Clerk of the Court in which the judgment was recovered, or from which the execution issued, the Clerk shall make an entry in the procedure book at the place where the judgment has been so entered, and the effect of the Sheriff's return shall therein be set forth (Form 95), and if the Sheriff's return shows a part satisfaction of the judgment or execution, the same shall be so stated, and the judgment against the judgment debtor shall stand only thereafter for the residue of the debt or damages, interest and costs.

(*b*) Where the Sheriff's return relates to a certificate for a claim within the jurisdiction of the Division Court that has not been paid in full, and such certificate is filed with the Clerk of the Division Court in the division where the cause of action arose, or wherein the debtor (*or* one of the debtors if more than one) resided, the Clerk of such Court shall enter the same in the procedure book, as a judgment of such Court (Form 96), for the unpaid balance due thereon, as appears by such return, and shall take proceedings thereon, as upon any other judgment of such Court.

The first clause of this rule is similar to 51 Vict., c. 11, s. 4. It is inserted in vol. 1 as section 212 (*a*). *See* p. 302.

For the unpaid balance.—Where the first entry in the book is the sheriff's return, judgment is entered only for the unpaid balance. If the suit was originally commenced in the Division Court, credit must be given for the dividend paid by the sheriff, and the judgment thereafter stands only for the residue.

134. After a transcript of judgment has been issued from the Home Court to a Foreign Court or to a County Court, the Clerk of the Home Court has no further right to deal with the case, as his functions have ceased therein (except by order of the Judge or under the provision of 52 Vict., c. 12, s. 24), and he cannot, either as agent for the judgment creditor, or otherwise, order, in the name of such judgment creditor, or of any one else, that the money made or paid thereon shall be transmitted to himself or to any other person.

(*a*) When, upon the application of any plaintiff or defendant having an unsatisfied judgment in his favor, a transcript of the entry of such judgment, under section 217, or a transcript of the judgment under section 223 of the Act is issued from the Court in which the judgment has been recovered, an entry thereof shall be made by the Clerk in the procedure book, and

Rules 134-136

no further proceedings shall be had in the said Court upon any such judgment, without an order from the Judge, except as provided by section 217 of the Act, as amended by section 24 of 52 Vict., c. 12; in the case of a judgment of which a transcript has been issued to another Division Court.

(*b*) Every transcript of a judgment shall be prepared by the Clerk upon a full sheet of foolscap paper, carefully written in a plain hand, or printed without contraction of words or figures, and shall be according to the Forms 164, 164*a*, or 164*b*, and if a judgment has been revived, the order of revival, or its purport, shall be set forth therein.

Clerk's functions cease on transcript.—The clerk cannot even act as agent for the judgment creditor after he has issued a transcript.

To a County Court.—There will hereafter be no transcript to a County Court. *See* 57 Vict., c. 23, s. 8, by which all provisions as to such transcripts are repealed.

52 Vict., c. 12, s. 24.—This is incorporated in vol. 1 as part of section 217: *see* p. 306. Upon an affidavit being filed under that section, the clerk's functions reattach, so far as process in his own court is concerned.

Without an order.—These words are taken from 52 Vict., c. 12, s. 24.

Section 223.—This is repealed by 57 Vict., c. 23, s. 8.

Form of transcript.—Sub-section (*b*) is taken from old rule 160, which applied only to County Court transcripts.

135. No transcript or copy of a judgment shall be issued or acted upon, under the 215th or 217th section of the Act, where the proceedings have abated, or in a case where no warrant of execution or judgment summons, shall have issued on a judgment more than six years old, unless such judgment shall have been revived.

Similar to old rule 162. *See* rules 139-143 as to reviving judgment. If any execution or judgment summons has been issued, then, although judgment may be more than six years old, transcript may issue.

136. In cases that have been brought to trial the Clerk shall not issue any transcript of a judgment until after the lapse of fourteen days from the trial, except upon the order of the Judge.

This carries out the principle of 52 Vict., c. 12, s. 16, and rule 125. If a transcript were to be issued within fourteen days, execution might be issued thereon in the foreign court before the statutory limit had expired, and the provision of the Act in that way frustrated. If judgment has been entered by default, or under section 111, transcript may be issued immediately.

Order of judge.—An order for payment forthwith, or for execution forthwith, would be insufficient. It would, perhaps, have been better if the rule had prohibited the issue of a transcript prior to the time when an execution could be issued in the home court.

137. The entries of proceedings on a transcript under the 217th section of the Act, may be made in the procedure book, of the Court to which it has been sent, in the form of an ordinary suit, as near as may be. And the procedure book shall, for that purpose, be the transcript of judgment book required by the Act.

Similar to old rule 163.

Judgment book.—The Act requires the clerk to enter transcript in a book kept for that purpose: *see* section 306. This rule relieves the clerk from keeping a separate book.

138. All special judgments or orders shall be prepared by the Clerk, or such other person as the Judge shall direct. Either party dissatisfied with the judgment or order as so prepared may apply to the Judge by motion to vary and finally settle the same; but, except by leave of the Judge, such notice shall not operate as a stay of proceedings. The judgment or order, when finally settled, shall be filed, and a minute of such filing, with the date thereof, shall be entered in the procedure book.

Special judgment.—What is a special judgment or order? Many orders and judgments for which no form is prescribed by the rules are common and ordinary orders and judgments, and in no sense special. It is submitted that a special judgment or order is one the form of which is not ordinary in Division Court proceedings, or which is directed to contain terms or conditions which are not ordinarily inserted in judgments or orders of a like kind. Judgments or orders made under section 73 of the Act would ordinarily be in a special form. When the order is prepared, what is to be done with it? Is it to be signed? How is the party dissatisfied with the form to ascertain its terms? It is not required to be filed until finally settled. The rule seems to treat an order that no one is dissatisfied with as one not "finally settled." Is such an order, therefore, not to be filed? It would have been clearer if the rule had required every order signed by the judge to be forthwith filed.

Minute of filing.—The order and judgment will take effect from the date of being pronounced, not the date of filing. It is necessary that every judgment and order be also entered in the procedure book: rule 125. Under section 145, vol. 1, p. 211, execution cannot be issued unless otherwise ordered until fifteen days after the entering of the judgment; but *see* rule 125.

Rules 139-140

Reviving Judgments, Etc.

139. During the lives of the parties of a judgment, or of any of them, execution or other process may be issued at any time within six years from the recovery of the judgment.

This is substantially similar to old rule 155 and C.R. 885.

140. In the following cases:—

(*a*) Where any change has taken place after judgment by death or otherwise, of the parties entitled or liable to execution.

(*b*) Where a husband is entitled, or liable to execution upon a judgment or order, for or against his wife.

(*c*) Where a party is entitled to execution upon a judgment of assets in future.

(*d*) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recovered against such company, or against a public officer or other persons representing such company.

The party alleging himself to be entitled to execution must apply on affidavit to the Judge for leave to issue execution accordingly. And such Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in any action may be tried; and in either case such Judge may impose such terms as to costs or otherwise as shall be just. No order to issue execution shall be made under this rule *ex parte*, but only after at least three days' notice to the party against whom it is sought to issue execution, unless under special circumstances the Judge shall otherwise order.

Except the last clause, this is taken from C.R. 886; English C.C.R. 1889, Ord. xxv., r. 9 (*a*); rules English Supreme Court, 1883, Ord. xlii., r. 23. Rule 140

C.R. 886 does not include clause (*d*); English C.C.R., 1889, Ord. xxv., r. 9 (*a*), does not include clause (*c*). None of the rules of the other tribunals contain the last clause requiring notice.

The English County Court rule also provides in paragraph (*a*) for a change by assignment.

Change of parties.—If a sole plaintiff died, it would be necessary to revive under this section. If a judgment debtor died, no execution could be issued against his executors or administrators except by proceeding to revive under this rule. An assignee of the judgment would, notwithstanding the absence of the word "assignment," probably be entitled to revive the judgment in his own name: Phillips v. Fox, 8 P.R. 51. The old rule of the Division Court provided only for cases under clause (*a*). *See* old rule 157.

Husband entitled or liable to execution.—*See* R.S.O., c. 132, ss. 15, 16, and 17.

Judgment of assets in future.—It was unnecessary to provide in this rule for the procedure upon such a judgment, as different procedure is already provided therefor in rule 97. The difficulty has arisen from too close copying of C.R. 886. In the English C.C.R., as already pointed out, the same mistake was not made. In the conflict that exists between the two rules, it is somewhat difficult to determine which rule is to be followed; but it is submitted that rule 97 should be followed in such cases, and a summons should be issued according to form 53.

Joint stock companies.—Where a judgment is recovered against a joint stock company and an execution against the company has been returned unsatisfied, in whole or in part, the amount due on such execution, but not beyond the amount unpaid by any shareholder on his stock, is recoverable with costs against such shareholder: R.S.O., c. 157, s. 61; R.S.C., c. 119, s. 55; Brice v. Munroe, 12 A.R. 453. Directors are also liable for wages in certain cases: R.S.C., c. 119, s. 60; R.S.O., c. 157, s. 68. Hitherto, it has been necessary to enforce this liability by separate action or writ of *scire facias*, but in the Division Court no writ of *sci. fa.* is provided for. The present rule is adopted in lieu of *scire facias*: *see* Lindley on Companies, 280. The plaintiff may select any shareholder or shareholders he pleases, and cannot be restrained in his selection, provided he acts *bona fide* for the purpose of obtaining payment of what is due to him: Lindley on Companies, 282. Fraud of a shareholder by the directors, in which the judgment creditor took no part, would afford no defence to the proceedings against the shareholder under this rule: Henderson v. Royal British Bank, 7 E. & B. 356.

Public officer or other persons representing such company.—These words are not applicable to companies in this province. In England some unincorporated companies are represented by a public officer: *see* Lindley on Companies, 266.

On affidavit.—The affidavit should set forth the recovery of judgment and such facts as may be necessary to entitle the party applying to issue execution. *See* additional forms.

Issue may be directed.—The judge may direct an issue to be tried in which the party applying would affirm, and the other party deny, the right to have execution issued.

Notice of application.—Three clear days' notice must be given to the party against whom it is sought to issue execution, unless under special circumstances the judge otherwise orders. It is hard to define what would be special circumstances within the meaning of the rule: *see* Stroud, 749 and 750. If the judgment creditor would be in danger of losing the amount of his claim during the delay which would be caused by regularly making the application, these would probably be held to be special circumstances.

Rules 141-143

141. No execution or other process shall, without leave of the Judge, issue on a judgment more than six years old, unless some payment has been made thereon within twelve months previously; but no notice to the debtor, before applying for such leave, shall be necessary, and such leave shall be expressed on the execution or warrant, or summons in the words, "*Issued by leave of the Judge.*"

Similar to old rule 156.

More than six years old.—In the High Court and County Courts, unless an execution is issued within six years, no execution can be issued thereafter except after a revival of the judgment. *See* C.R. 886. If an execution has been issued, however, within six years, no revival is necessary to entitle the plaintiff to issue execution after the expiration of six years: Jenkins v. Kirby, 2 L.J.N.S. 164. In Division Courts, if a judgment is more than six years old, the leave of the judge is necessary unless a payment has been made within twelve months previously. Leave would not be given unless the application should be made within twenty years from entry of judgment: McMahon v. Spencer, 13 A.R. 430, even though an execution may in the meantime have been issued thereon: Price v. Wade, 14 P.R. 351.

142. The renewal of all writs of execution may be made from time to time, before the expiration thereof, by the Clerk of the Court issuing the same, by marking on the margin of the writ a memorandum to the following effect:—"Renewed for six months from the date thereof."

Dated day of 18 . X.Y., Clerk.

Similar to old rule 158, except that the renewal is now for six months, pursuant to section 220. *See* vol. 1, p. 308.

143. Where one or more of several plaintiffs or defendants shall die after judgment, proceedings to enforce the same may be taken by the survivors or survivor, or against the survivors or survivor, without leave of the Judge.

Similar to old rule 154.

The right of survivorship.—Where a judgment is recovered by two or more, the right to enforce the same accrues to the survivors or survivor on the death of any judgment creditor, even though they are partners in business: Davis v. Andrews, W.N. 1884, 94. A judgment debtor, of course, continues liable on a judgment, notwithstanding the death of any of his co-debtors.

Cross-Judgments to be Set off.

144. In case there are cross-judgments between the parties to an action, the Judge, on the application of either party, may by order direct the Clerk to make an entry thereof in the procedure book, and that the party only, who has obtained judgment for the larger sum shall have execution, and the Clerk shall (if required) issue execution thereon in the ordinary form, for the balance over the smaller judgment; and he shall enter satisfaction on the judgment for the smaller sum. If both sums are equal, satisfaction shall be ordered to be entered upon both judgments. (*See* Forms 223-226 inclusive.)

The rule provides the procedure to be adopted for giving effect to section 213 of the Act. *See* vol. 1, p. 303.

CLERKS' AND BAILIFFS' DUTIES.

145. The Clerk of every Division Court shall have an office at such place, within the division for which he is Clerk, as the Judge shall direct.

Similar to old rule 76. By 57 Vict., c. 23, s. 9, the Lieutenant-Governor in Council may now designate and appoint the place within a division where the office of the clerk of such division shall be situated.

146. The following books shall be kept by the Clerk, and the necessary entries fairly made therein, namely:—1st, a book to be called the "Procedure Book," in which shall be entered a note of all process issued, and of all orders, judgments, transcripts received, warrants, executions and returns thereto, and of all other proceedings, in every cause, and at every Court; 2nd, a book to be called the "Cash Book," in which shall be entered, from day to day, an account of all suitors' moneys paid into and out of Court; 3rd, a "Debt Attachment Book"; 4th, a "Clerk's Fee Book," for the purposes set forth in section 68 of the Act; 5th, the "Judgment Debtors' Book," provided for by Rule No. 201; and 6th, the "Order Book," required by sub-rule (*a*) to this rule, which books shall be

Rules 146-147

according to the Forms Nos. 4, 5, 6, 7, 8, and 9, and shall be kept, as nearly as may be, in the manner shown therein, respectively.

(*a*) The said order book shall be a book in which all orders for the issuing of process or alias or subsequent summonses, and executions and other documents requiring duties to be performed by the Clerk, from day to day, shall be entered and dated as they occur, and signed by the party requiring the same, or his solicitor or agent.

Taken from old rule 77. A clerk is now required to keep an order book in which præcipes for all process, etc., which he is required to issue, shall be entered and signed. The clerk should be particular not to issue process without an order therefor.

147. After the books which shall be in use, when these Rules come into effect, shall have been filled up, the Clerks of the respective Courts shall keep procedure books in the Form No. 4 following and make entries therein according to these Rules.

(*a*) At the beginning of each such book shall be printed and ruled a page of specimen entries, which shall be taken as suggestive for form of entry therein, according to the nature of the proceeding, as shown by Form No. 4. Entries in the procedure book are to be under and subject to the direction of the Judge, in all cases.

(*b*) At the commencement of each procedure book is to be an alphabetical index bound up within the book.

(*c*) The index of the procedure book is to be ruled and lettered the same as ordinary commercial ledger indexes, suited to the size of such book.

(*d*) The entries in the said index shall first set forth the names of the parties, defendants, or primary

debtors, or garnishees, as the case requires, or of persons or corporations against whom suits or proceedings are taken; and, next, the names of the parties, plaintiffs, or primary creditors, or of persons or corporations at whose suit such proceedings are taken or adopted; and are to be made immediately after each suit or proceeding is entered. The page of such entry shall be properly inserted in the index after the names of the parties, and the year number of the suit, thus: Rule 147

Under the letters McC. Year No. 17, 1891 McCrimmon, Deft. ats. Jayland, Plff. Page 317.

(In this case, Jayland being the plaintiff, and McCrimmon the defendant, and the letters "*ats.*" meaning *at the suit of.*)

Under the letter J. Year No. 18 Jamison, Primary debtor. ats. McDonald, Primary creditor. Page 76.

Under the letter G. Year No. 19 Gough, Garnishee. ats. Pierson, Primary creditor. Page 77.

(*e*) Every Bailiff shall keep a separate book, "Fee Book," in which he shall enter, from day to day, all fees, charges and emoluments received by him by virtue of his office, as required by section 68 of the Act, and which shall be according to the Form No. 12.

(*f*) On the 15th day of January in every year, he shall make up to and including the 31st day of December of the previous year, a return to the inspector, under oath showing the aggregate amount of fees, charges and emoluments so received by him by virtue of his office, and which he has become entitled to receive and has not received during the year.

Rules 147-148

(*g*) In the return made by the Clerk shall be shown the actual amount of the disbursements during the same year in connection with his office.

(*h*) Every Clerk of a Division Court for a division embracing a city, or part of a city, shall keep a separate book, in which he shall enter from day to day all fees, charges and emoluments received by him by virtue of his office, showing the sums received by him for fees, charges, and emoluments of all kinds whatsoever; and shall, on the 15th day of January in each year, make up to and including the 31st day of December in the previous year a return to the Lieutenant-Governor, under oath, of such fees, charges and emoluments so received by him during the said year.

(*i*) Every Clerk shall, on or before the 15th day of January in each year, make a return of the business of his office, for the year ending the 31st day of December preceding, in such manner as the Lieutenant-Governor shall direct.

This rule sums up the duties of the clerk and bailiff with reference to procedure book and fee book. *See* also sections 67 and 68, vol. 1, p. 53. The returns required and the books required to be kept by sub-sections (*f*), (*g*), and (*h*) are for the purpose of ascertaining what amount the Division Court clerks are to be entitled to retain for their own use. *See* vol. 1, pp. 48 and 49.

Under the Act 57 Vict., c. 23, s. 10, the procedure book, and foreign procedure book, may be in the respective forms contained in schedules B and C to that Act: *see* appendix.

148. The Clerk shall number every claim in the order in which it is received by him: the numbering to show the standing of the suit, in respect to the whole number of suits entered in the Court for the then current year.

Similar to old rule 78.

149. In any case where the proceeding by special summons is warranted, it shall be adopted by the Clerk, unless otherwise ordered by the plaintiff.

(*a*) Where a plaintiff orders an ordinary summons to be issued for a claim for which a special summons would be warranted, and no notice of defence is entered, and the case comes to Court, no more costs shall be allowed the plaintiff than would be taxed upon a judgment by default on special summons.

The first part is similar to old rule 79. The second part prevents the plaintiff from obtaining the costs of a trial where he has not issued a special summons in the first instance.

150. The Clerk shall annex to every summons the copy of claim entered with him, according to section 95 of the Act; and to each copy of summons to be served shall be likewise annexed a copy of such claim; and it shall be deemed a part of the summons.

Taken from old rule 80. The claim furnished by the plaintiff becomes part of the summons.

151. The Clerk shall enter in the procedure book the full amount of moneys returned by the Bailiff with an execution, and shall show therein the amount which he has taxed and paid the Bailiff as his fees for executing the same.

The bailiff is to return the full amount. The entries are to be made in the procedure book, and thereby become *prima facie* evidence under section 45, vol. 1, p. 37.

152. All the papers in the cause received or filed by the Clerk shall be kept by him together in the original summons, and be produced by the Clerk at the hearing of the cause, or when required on application to the Judge. The original summons, in all cases, shall be printed on a half-sheet of foolscap, in order that the papers may be kept therein.

Similar to old rule 86. A judge should have all the papers before him at the trial, so that all the contentions raised by either party may be brought to his notice.

Rules 153-154

153. Every Clerk, upon being furnished with the necessary postage or post card, is expected and enjoined to answer promptly all reasonable inquiries made touching suits by the parties thereto, their solicitors or agents.

No fee is allowed to the clerk for answering reasonable enquiries. Old rule 174 did not impose the condition precedent of payment of postage.

THE TRIAL LIST.

Service of Subpœna in Foreign Division.

154. The Clerk of any Division Court shall, when required, forward all summonses to the Clerk of any other Division Court in the same or any other county for service, and the Clerk of such other Division Court who shall receive any summons sent to him, by the Clerk of another Division Court, shall hand the same to the Bailiff for service, and when returned shall receive the same from the Bailiff, and prepare the necessary affidavit of service, and upon payment of his fees and fees for such service, shall return it to the Clerk from whom he received it, with the necessary affidavit verifying the service and mileage.

(*a*) Every Clerk receiving such summons for service shall enter all such proceedings in a book, to be called the foreign summons book (Form No. 10), to be kept by him for the purpose of recording the same.

(*b*) No Clerk or Bailiff is authorized to receive money from a defendant or primary debtor or garnishee upon a claim or suit where the summons is merely forwarded for service, or served under this rule, either as agent for the party, or as Clerk or Bailiff of the Court, or otherwise. This rule shall not be held to apply in the case of a Clerk or Bailiff who is postmaster receiving and transmitting money by means of postal money order, under regulations of the Post Office Department.

The duty of the clerk and bailiff of the foreign court is merely to serve papers forwarded to them. They have no control over the action, nor are they constituted the agents of the plaintiff in the suit.

Rules 154-155

155. The Clerk shall, for each sitting of the Court, prepare three lists, viz.: a Jury list, in which he shall enter all cases to be tried by a jury; a Judge's list, in which he shall enter all cases to be tried by the Judge alone; and a Judgment Debtors' list, in which he shall enter all cases in which the judgment debtor has been summoned for examination under section 235.

(*a*) In the Jury list and Judge's list, respectively, all causes in which the sum sought to be recovered does not exceed $100 shall be entered first; and subsequently all causes in which the sum exceeds $100, and subject to this provision, causes shall be entered in the Jury list and Judge's list, respectively, in the order in which they were in the first instance entered with the Clerk; and in the Judgment Debtors' list, they shall be entered in the order in which the summonses for examination were issued.

(*b*) All interpleader issues, in which the money claimed, or the value of the goods or chattels claimed, or of the proceeds thereof exceeds $100, or where the damages claimed by either party against the other or against the Bailiff exceed the sum of $60, shall be entered among the causes in which the sum sought to be recovered exceeds $100.

(*c*) Nothing in this rule provided shall interfere with the discretion of the Judge to dispose of the causes at any such sitting of the Court in the order that may seem most convenient to him.

Rules 155-157

(*d*) The lists shall be divided into and ruled with the following six headings, viz.:—

1st. The number on the list (to be stated consecutively).

2nd. The year, number of the summons.

3rd. The style of the cause.

4th. The nature of the subject of the action, whether on contract or for tort, or in replevin, or an interpleader, or a judgment summons, etc.

5th. The amount claimed (if any).

6th. The judgment, or order, or disposition made of the case by the Judge.

The list can be conveniently kept by the clerk in a book which will form a record of the business done at each sitting of the court.

Trial by Jury.

156. In case any party has required a jury to be summoned to attend any sitting of the Court, the Clerk shall issue a summons and also twelve copies thereof for service on the jurors, and shall deliver them to the Bailiff for service. Upon the return of the original summons by the Bailiff, the Clerk shall prepare an affidavit of service and of the mileage necessarily incurred to effect such service, which affidavit shall be sworn by the Bailiff.

Summoning juries.—*See* section 154, *et seq.*, and 57 Vict., c. 23, ss. 5 and 6, *infra*.

Proceedings in Transferred Cases.

157. The Clerk, upon receiving the papers and proceedings in any action transferred to the Court of his division under section 87 of the Act, shall at once enter the proceedings in his procedure book, and number the action in the regular order as if it were a new action commenced on the day he received said papers and

proceedings, and shall place the action on the list for trial, and take all further proceedings in the action, in the manner directed by section 87.

The action, upon being transferred under section 87, becomes, to all intents and purposes, an action in the court to which it is transferred.

158. After receiving the papers he shall forthwith notify the parties or their agents by mailing them registered notices informing them of the date, hour, and place of the sittings at which such case is to tried.

"**Forthwith.**"—*See* vol. 1, p. 16.

The clerk of the court in which the action was first entered should furnish the clerk of the court to which the action is transferred with the addresses of the parties to the suit.

159. The Clerk of the Court who issued the summons shall certify to the Court to which the case is transferred, in detail, all the costs incurred in the suit up to the date of transfer, inclusive.

If judgment is given for either party with costs, the costs incurred in the first court will, subject to any other disposition which may be made thereof, be taxable to him, and the certificate under this rule would be proper evidence of the amount of such costs.

160. When final judgment is entered by the Clerk, the Clerk is to file the summons and particulars of claim, with the affidavit of the due service of both.

The affidavit should be annexed to the summons and particulars.

Postponed Judgment.

161. In case the Judge shall at the trial postpone pronouncing his decision, and shall either omit to name a subsequent day and hour for the delivery thereof in writing at the Clerk's office, as provided by section 144, or, having named such day and hour, shall omit to give his decision thereat, and shall not have duly extended the time for giving the same, his decision may subsequently be given by him at any regular sittings of the Court, or in writing at the Clerk's office upon a day and hour to be fixed by the Judge; provided that written notice of his intention to do so shall have been sent to

Rules 161-162

the parties, or their solicitors or agents by registered letter, at least ten days prior to said sittings, or to the day so fixed by the Judge, either by the Judge or by the Clerk of the Court; such letters to be addressed to them at the addresses given by them in pursuance of Rule No. 241; if such address have been given; and if not, then at their last known places of abode.

Postpone pronouncing his decision.—This rule is introduced for the purpose of overcoming the difficulties which have arisen on the construction of section 144 of the Act. In Forbes v. Michigan Central Railway Co., 20 A.R. 584, at p. 589, Osler, J.A., said: "The power and jurisdiction of the inferior court to deal with the case thus coming before it is thus plainly defined and circumscribed. It comes on for trial on the day for which the defendant has been summoned. If it is not then tried or duly adjourned, it is at an end, though the plaintiff, no doubt, may bring a new action. There is no power to revive it or fix a new day for the appearance of the defendant and the trial. If the judge neither disposes of the case at the trial, *instanter*, nor fixes a subsequent day and time for its delivery, the case is equally at an end as if it had not been adjourned. There is no power to take it up again, or to give a judgment which will be as effectual as if rendered in court at the trial."

The rule provides for the two cases, (*a*) omission to name a subsequent day and hour, or (*b*) omitting to give his decision at the time named. The jurisdiction of the judge will still be confined to giving judgment upon a day and at an hour fixed by him, of which written notice shall have been sent, in accordance with the rule, ten clear days prior to the day so fixed. The notice may be given by either the judge or the clerk.

Last known place of abode.—*See* Hanrott v. Evans, 4 T.L.R. 128; R. v. Evans, 19 L.J.M.C. 151; R. v. Higham, 26 L.J.M.C. 116; R. v. De Winton, 16 Cox C.C. 459; R. v. Lee, 52 J.P. 344. The phrase means "his present known place of abode, if he have any, and the last known which he had if he has ceased to have any."

Form of notice.—The form of notice to be given by the clerk is form 202.

162. In case the defendant shall have given the Clerk notice that he disputes the plaintiff's claim, or any other notice of which the plaintiff should be informed before the trial, or if the defendant has given a confession, or failed to give notice of defence when required, the Clerk shall immediately send the plaintiff notice thereof.

This is similar to old rule 88.

Form of notice.—*See* form 201. It is necessary that notice should show the place and time of the sittings of the court at which the case is to be heard: 52 Vict., c. 12, s. 25. *See* section 113 (*a*), vol. 1, p. 162.

Claim under ten dollars.—Where the claim is under $10, it is not now necessary that the clerk should notify the plaintiff that no defence has been entered: 57 Vict., c. 23, s. 11.

163. The Clerk of every Division Court shall, immediately after the receipt of any sum of money for any party to an action, forward through the post office, to the party entitled to receive the same, a notice, enclosed in an envelope, addressed to such party, or, in case of a transcript of judgment from another Court, then to the Clerk who issued the same, at his proper post office address, informing him of the receipt of the money. The notice thus sent shall be prepaid and registered, and the Clerk shall obtain and file among the papers in the action the post office certificate of the registration, and shall be at liberty to deduct the postage and charge for registration from the moneys in his hands, but he shall charge no fee for the notice. The absence from among the papers in the action of the certificate of registration shall be *prima facie* evidence against the Clerk that the notice has not been forwarded.

This is identical with section 294 of the Act: *see* vol. 1, pp. 387 and 388. On page 388 will be found the form of notice.

By rule 247, all moneys are payable to the parties at the office of the clerk. If the party desires money to be transmitted to him, written directions as to the mode of transmission are to be given, and the money so transmitted will be at the risk of the party giving directions.

164. The Clerk and Bailiff of the Court shall not upon any pretence whatever withhold any moneys received for suitors, on the ground that any Clerk or Bailiff may be indebted to the officer holding such money either for fees or costs or otherwise; but all such moneys, when received or collected, shall at once be duly paid over to the order of the party entitled to the same without reference to such accounts.

This is similar to old rule 97. The money, when collected, is the property of the suitor, and no deduction can be made therefrom except for unpaid costs in that action owing by the suitor.

165 Where money is received by the Clerk on a suit entered by a solicitor or agent who has paid the deposit, or is responsible for costs to the clerk, such money shall

Rules 165-167

not without notice to the solicitor or agent be paid out to the person beneficially interested therein, unless upon the order of the Judge.

The clerk is to enter in the procedure book, form 4, col. 1, the name of the solicitor or agent who enters the claim. This rule practically gives such solicitor or agent a lien for the amount of any deposit paid by him, or any costs which he has paid to the clerk.

Notice to Defendant of Plaintiff Proceeding for Remainder of Claim.

166. In case the plaintiff has signified in writing his intention to proceed for the remainder of the demand claimed, the Clerk shall notify the defendant, by post, or by sending notice to his usual place of abode or business, and the notice shall state when and where the case is to be tried.

The old rules and practice provided no method of ascertaining whether or not a plaintiff had signified to the clerk his intention to proceed for the remainder of the claim after payment into court. The present rule does not provide what is to be the consequence in the event of the clerk not notifying the defendant. If the defendant were damaged by such want of notice, he would probably have a right of action against the clerk. There are various cases, *e.g.*, rules 80 and 101, where the suit is to proceed on failure of notice by the plaintiff. This rule does not provide that the defendant shall be notified of such failure.

Form of notice.—For form of notice, *see* form 201.

Notice, on Leave Granted to Defend.

167. When the Judge has, by order, granted leave to a defendant to dispute the plaintiff's claim, and the defendant has left with the Clerk the requisite notice, as provided by section 112 of the Act, the Clerk shall send to the plaintiff, his solicitor or agent, notice of such order, specifying at what sittings of the Court the case will be tried.

See section 112, vol. 1, p. 161, and rule 121, *supra*. *See* also rule 277, *infra*. The rule is but a carrying out of the provisions of rule 162.

168. In any case in which the defendant, primary debtor or garnishee or a third party claimant in a garnishee proceeding or any other person intervening or claiming any interest in the suit, has given the Clerk notice that he disputes the claim of the plaintiff or primary creditor, or any other notice of which the plaintiff or primary or attaching creditor should be informed before the trial, or in any case in which it has become the duty of the Clerk to give notice to any party to a cause of any defence, admission, Judge's order or other matter, of which he should be notified before the trial, such notice must show the place and time of the sittings of the Court at which the cause is to be heard.

This is a repetition of 52 Vict., c. 12, s. 25, except that the plaintiff is likewise to be notified of any notice given by a claimant or person intervening in garnishee proceedings. *See* also rule 162.

Form of notice.—For form of notice, *see* form 201.

169. When any notice required to be given to any of the parties to a suit is sent through the post office, the Clerk shall register the letter containing such notice, and shall obtain and preserve with the other papers in the suit a certificate of such registration.

This is similar to old rule 180. In some cases, notices are authorized by postal card. *Quære.*—Must or can these be registered? *See* rule 123 (*a*).

Tender.

170. When a defendant pays money into Court, in part payment of the amount claimed (section 125), or in order that he may rely on the defence of tender (section 122), and the plaintiff does not accept in satisfaction of the action the sum so paid into Court, the money shall not be paid out until after the judgment, and any costs which shall have been awarded to the defendant shall be deducted therefrom and paid to the defendant.

Taken from old rule 130. The money remains as security to the defendant for any costs which may be recovered against the plaintiff. Under section 127 of the Act, the right to a judgment against the plaintiff therefor is also conferred: *see* vol. 1, pp. 178 and 179. In cases of tender, section 124 virtually provided the practice prescribed by this rule.

Rules 171-173

Tender or Payment of Money into Court.

171. In case a defendant pays into Court a sum of money in full satisfaction of plaintiff's demand, together with costs, under section 125 of the Act, or pleads a tender before action brought and pays money into Court, under section 122 of the Act, the Clerk shall give to the plaintiff or his agent notice thereof forthwith by post (on receiving the necessary postage), or shall send the same to his usual place of abode or business.

Sections 122 and 126 of the Act prescribe the same practice as directed by this rule. *See* old rule 87.

Form of notice.—For form of notice, *see* form 195.

Application for New Trial.

172. In the event of an application for a new trial, in a case in which the sum sought to be recovered exceeds $100, if the evidence has been taken down in writing, the Clerk shall forward the same with such application and for the purposes thereof.

Notes of evidence.—The evidence is required to be taken down in writing in those actions when no agreement not to appeal has been filed. *See* section 115, vol. 1, pp. 164 and 165. *See* also section 155, vol. 1, p. 233. Section 115 provided for the transmission of the evidence for the purposes of an application for a new trial.

173. Upon application for a new trial, when either party appeals and leaves papers requiring service upon the opposite party with the Clerk or at his office, under section 150, the Clerk shall forthwith mail, by registered letter, all such papers to the person or party entitled to the same, or his solicitor or agent, upon payment of the postage and his fees for transmitting.

Where either party fails to appoint an agent for service of an application for a new trial in an action wherein either party may appeal, service of all papers may be made on the Division Court clerk. Section 150 of the Act requires the clerk to forward such papers by registered letter. This rule requires payment of the postage and fees for transmission to the clerk, but it does not provide who is to pay such fees. Section 150 of the Act makes service upon the clerk in such a case good service, and does not impose the necessity of prepayment of fees. If papers are served upon the clerk, and the party serving them does not prepay the fees, it would, it is submitted, be improper for the clerk not to forward them as commanded by the Act: *see* vol. 1, p. 227.

Taxation of Costs.

174. In every case the Clerk shall make out a bill of costs in detail, and the same may be endorsed upon or annexed to the original summons and may be in the form shown No.

(*a*) Where practicable, the costs of an action or matter shall be taxed by the Clerk on the day on which the action or matter is tried or heard, and every taxation shall be subject to revision by the Judge or acting Judge.

The first part of the rule is taken from old rule 89. The second part is new. It is intended thereby that the judge's decision on the question of the amount of costs should be obtained at the trial; and it is submitted that judges should, in all cases in which the court is held out of their county town, revise the costs in each action on the day of trial.

175. On payment of a fee of ten cents, every Clerk, when required by parties paying costs, shall give a statement in writing of items of all costs, including Bailiff's fees in detail, and upon being furnished with the necessary postage or post card, transmit the same by post.

This rule is taken from old rule 175. The fee for detailed bill of costs was formerly five cents. It is now increased to ten cents, and the clerk is also entitled to postage.

Returns.

176. The Clerk shall, on the 15th day of January in every year, make up, to and including the 31st day of December of the previous year, a return to the inspector, under oath (on forms to be furnished to him), showing the aggregate amount of fees, charges and emoluments received by him, and which he has become entitled to receive and has not received, during the year.

This is similar to section 68. *See* vol. 1, p. 53; *see* also old rule 83.

177. He shall transmit to the Treasurer of the Province, on the 15th day of January in every year, a duplicate of the said return, and shall also pay to such Treasurer, for the use of the Province, such proportion of

Rules 177-180

the fees and emoluments earned by him during the preceding year as under the Division Courts Act (section 59) he is not entitled to retain to his own use.

This is practically identical with section 60. *See* vol. 1, p. 49.

178. The list of unclaimed moneys, required by the 49th section of the Act, shall be made under oath, according to the Form No. 221, and shall, in the month of January in each year, be transmitted by the Clerk, together with the moneys (if any) therein mentioned, to the County Crown Attorney, and, if no money remains unclaimed, the fact shall be stated in the affidavit.

This is similar to old rule 84. *See* also section 49, vol. 1, p. 39. It is necessary for the clerk to put up a copy of the return in his office, and allow it to remain there at all times; and during court hours the same must be exhibited in some conspicuous part of the court house, or place where the court is held. *See* section 49, sub-section 2.

179. At the opening of every Court, and at such other times as the Judge shall require, the Clerk shall lay before the Judge the returns of Bailiffs, under rule 193, duly certified under rule 194. (See Form 239.)

This is similar to old rule 172. The clerk should see that the bailiff has made his return prior to the opening of the court. It is advisable that these returns should be carefully inspected by the judge, as it is only by faithful discharge of duty by the bailiff under executions that the Division Courts can be made efficient.

180. The Clerk shall, at every sitting of the Court, report in writing to the Judge as to the several sureties of himself and Bailiff or Bailiffs of his Court, showing whether any of them have died, become insolvent, or left the county since his last report, and mentioning any facts connected therewith which ought to be made known to the Judge.

This is similar to old rule 173. The security covenant is an important protection to suitors in Division Courts. The judge is, in the event of any surety dying, being a resident out of Ontario or insolvent, to notify the clerk or bailiff thereof; and if such security is not renewed within one month after notice, the office is forfeited. *See* section 40, vol. 1, p. 33.

The duties imposed upon the judge with reference to security are part of his judicial duties: *see* section 31, vol. 1, p. 23. It has been found necessary by the inspector of Division Courts that a personal inspection at the office of the clerks of the peace of the covenants filed by officers of the court is necessary. *See* Report of Inspector, Dec. 31, 1893.

Bond of Guarantee Company.—Where the security for a clerk or bailiff is by a policy in the Guarantee Company, it is necessary that a renewal receipt for that purpose should be filed with the clerk of the peace and attached to the covenant to which it refers. *See* 57 Vict., c. 23, s. 1.

181. Every Division Court Clerk shall make a return to the Inspector of Division Courts, on or before the 15th day of January in every year, showing the number of judgment debtors who, during the twelve months ending the 31st day of December previously, were ordered to be committed, and also of those who were actually committed, under each of the five heads mentioned in section 240 of the Act.

This is similar to 55 Vict., c. 11, s. 4. *See* section 248, vol. 1, p. 335.

Transfer of Cases to the High Court.

182. Where an order of transfer is made, under *The Judicature Act* or *The Division Courts Act*, the Clerk of the Court in which the proceedings were instituted, or the suit is pending, shall annex together all the proceedings and papers filed with him, and transmit the same, together with the order of transference or a copy thereof, to such officer of the High Court as the order directs.

Certiorari.—An order of certiorari transferring the action to the High Court may be made:—

(*a*) Under section 179 of the Act, where the debt exceeds $40, and the case is a fit one to be tried in the High Court. *See* vol. 1, pp. 106-108.

(*b*) Where the title to land is in question: 57 Vict., c. 23, s. 16.

(*c*) Where the validity of a devise, bequest, or limitation under a will or settlement is disputed: 57 Vict., c. 23, s. 16.

Form of order.—For form of order, *see* C.R., form 156. *See* also additional forms.

Rules 183-185

Bailiff's Duties.

183. Every Bailiff receiving summons for service from a Clerk, shall promptly serve the same, and shall immediately after service has been effected make a return to such Clerk, showing the mode of service, and unless such return be duly made within six days after such service, the Bailiff shall not be entitled to the fee for return and attendance and making affidavit; and, where a summons has not been served, the Bailiff shall, immediately after the time for service has expired, return the same to the Clerk, stating the reason for non-service, in writing, on the back of the summons.

This is taken from old rule 90.

Immediately after service.—This contemplates that there shall be no delay on the part of the bailiff in returning the summons. *See* vol. 1, pp. 40, 162, and 371.

Showing mode of service.—The affidavit of service should show upon whom the summons has been served, and where and when.

Fees for return.—The clerk must not tax the bailiff his fees for return and attendance and making affidavit unless this rule is complied with.

Summons not served.—If the summons is not served at a time when the requisite number of days can expire before the court at which it is returnable, the bailiff must immediately return the same, endorsing on the back thereof in writing the reason for non-service.

184. The Bailiff shall attend every sittings of the Court at the place appointed for holding the same, at such time as shall be required by the Judge, and shall see that all suitable preparations are made for the proper accommodation of the Court. He shall make all necessary proclamations, preserve order, call the parties and witnesses, and perform such other duties thereat as may be imposed by the Judge.

Taken from old rule 91.

Preserve order.—The bailiff is invested with the authority of a constable during the actual holding of the court. *See* section 52, vol. 1, p. 43.

185. The Bailiff shall keep a book (see Form No. 11), to be called "The Bailiff's Process Book," and he shall enter therein every warrant or execution which shall have been delivered to him to execute, and shall enter

from time to time therein what he shall have done under or with such warrant or execution; and if the same be not executed according to the exigency thereof, why it was not so executed; and he shall, at all reasonable times, give to every party interested every information he may require as to the execution or non-execution of any such warrant or execution; and the book so required to be kept shall at all reasonable times be open to the inspection of the Judge or Clerk. Rule 185

(*a*) Bailiffs must return an execution within thirty days prescribed by the Act (section 220) unless it has been renewed at the instance of the execution creditor before the expiration of the thirty days, or, unless the seizure under the execution has been so recent, that he has been unable advertise and sell the property within the thirty days; in which latter case he must make a report to the Clerk of the condition of matters and of the facts of the case, so as to enable the Clerk to report them to the execution creditor.

(*b*) In case the Bailiff has offered the property for sale (after duly advertising it), without being able to either effect a sale or to realize a reasonable amount therefor, he must not sacrifice the property, but must offer it for sale again, if within the thirty days, and if after the thirty days and the execution has not been renewed, the execution must be returned property on hand for want of buyers.

(*c*) If an execution is returned by the Bailiff property on hand for want of buyers, after the thirty days, the Clerk cannot renew the execution, but must issue another process—directing the Bailiff to sell the property on hand for what it will bring.

Rules 185-187

(*d*) The whole of the money for debt (*or* damages, costs, interest, Bailiff's fees and percentage (but not disbursements) must be paid over by the Bailiff to the Clerk from whom he received the execution; and after the Bailiff's fees and charges are duly taxed, the Clerk must pay the Bailiff's proper taxable fees on executions, duly returned according to law, and none others.

The first part is similar to old rule 92.

It is important that the bailiff should comply with this rule, so as to protect himself in the event of any proceedings being taken against him for neglect of duty.

Renewal of execution.—Renewal of execution must take place at the instance of the execution creditor before the expiration of thirty days, unless a seizure has been made thereunder. The renewal cannot take place if thirty days have expired since its issue without renewal. *See* vol. 1, p. 308.

Property on hand.—It is the bailiff's duty to obtain a reasonable price for all goods offered for sale under execution. If he is unable to sell for such price, the clerk must issue a further warrant known in the High Court as a writ of *venditioni exponas*. Under this warrant, the bailiff will be justified in selling the goods for what they will bring.

Return to clerk.—The only deduction which the bailiff would be entitled to make from the expenses of sale are his disbursements. All other moneys levied must be paid over to the clerk. The bailiff cannot set off against the money so received any sum due to him by the clerk for fees or costs. *See* rule 164.

186. Every Bailiff receiving any money by virtue of his office, shall, immediately after the receipt thereof, pay over the same to the proper Clerk, and neglecting or failing to do so, shall be subjected to the loss of his office.

This is taken from old rule 96.

Immediately.—This means at the first opportunity. *See* vol. 1, pp. 40, 162, and 371.

187. The Bailiff or other officer executing any warrant of commitment, shall, at the time of delivering the party arrested to the gaoler, deliver to such gaoler the warrant of commitment, and shall endorse thereon the amount of his fees and mileage, and a statement of the actual day of the arrest.

This is taken from old rule 103.

Amount of fees and mileage.—The bailiff is required to endorse the amount of his fees and mileage, so that the debtor may ascertain the full amount required to obtain his discharge under section 244. *See* vol. 1, p. 333. **Rules 187-190**

Actual day of arrest.—It is presumed that it is intended that the term of imprisonment shall commence from the moment of the arrest by the bailiff, and that the gaoler is to compute the time the debtor was in the custody of the bailiff in determining the period of detention. If, however, the gaoler does not detain the prisoner longer than the period mentioned in the warrant, although he may have been in custody prior to the day of his delivery to the gaoler, the gaoler is not liable: Henderson v. Preston, 21 Q.B.D. 362.

188. The Bailiff receiving an execution shall immediately endorse on the same a correct statement of the day and hour of the day when he receives such execution, and, in addition to the formal return (Forms 235 to 237 inclusive) on every execution returned, he shall give a correct and full statement of the particulars, in detail, of all his charges made for fees and disbursements in the execution thereof; and a similar statement in making returns of writs of replevin and attachment.

This is similar to old rule 176.

Immediately means instanter. Vol. 1, p. 40. The object of making the endorsement was formerly to determine the priority between an execution issued from the Division Court and one held by the sheriff. The endorsement is not now of any practical utility, owing to the provisions of The Creditors' Relief Act.

In detail.—A general statement would be insufficient. Each item of fees and disbursements must be properly set forth.

189. Every Bailiff shall keep a cash book (Form No. 13), in which shall be entered all payments received by him of moneys on executions or otherwise, from the defendants or garnishees or others.

Cash book.—This book is in addition to the book which the bailiff is required to keep under section 68: *see* vol. 1, p. 53. It is the duty of the inspector to see that this rule is complied with: *see* vol. 1, p. 61.

190. In case a "summons" is not served in time to make the notice of the sittings of the Court, at the foot of "warning No. 2," available for the information of the defendant, the Bailiff shall return the same forthwith to the Clerk who issued the summons, and the Clerk shall

Rules 190-193

add a new notice of the proper days of the week and month on which the two or more ensuing sittings of the Court are to be held, and shall forthwith return or transmit the same to the Bailiff for service, and the proceeding herein directed may be repeated from time to time until due service is effected.

Not served in time.—*See* rules 17 and 18. *See* also sections 82, 96, and 97, vol. 1, p. 129. The bailiff should return the reason of non-service: *see* rule 183.

"Forthwith."—This is equivalent to "immediately," and means without any delay. If the summons is not served within one year, it will be necessary to obtain an order for renewal under rule 25: *see* pp. 14, 15.

191. In case such summons has been sent to a foreign Court the Bailiff shall return it to the Clerk of that Court for transmission to the Clerk of the Home Court, who shall add the new notice above provided for.

See notes to rule 190.

It is no doubt intended that the clerk of the home court shall forthwith return the summons to the clerk of the foreign court, who shall forthwith deliver the same to the bailiff for service.

192. Every summons must be served ten or fifteen days (according to the residence of the defendant) before the holding of the Court at which it is returnable (neither the day of service nor the day of holding the Court to be counted).

This is virtually a repetition of rules 17 and 18, and of sections 96 and 97 of the Act: *see* vol. 1, p. 129.

193. At every sittings and at such other times as the Judge shall require, the Bailiff shall deliver to the Clerk of the Court a statement or return on oath, (Form 239), of every warrant and writ of execution in his hands, and of what shall have been done since his last return, under every warrant and writ of execution, which he shall have been required to execute.

This is practically identical with old rule 93.

It is the duty of the clerk at the opening of every court, and at such other times as the judge shall require, to lay the returns before the judge: *see* rule 179.

194. The return mentioned in the last rule shall be filed by the Clerk in his office, and be open, without fee, to the inspection of any person interested; and the Clerk shall examine such return, and if found correct and complete, within ten days after the receipt thereof, shall endorse thereon a memorandum in the following words: "I have carefully examined the within return, the same is full, true, and correct in every particular, to the best of my knowledge and belief. Dated the day of 18 , Clerk." And if such return be found by the Clerk to be incorrect or incomplete, he shall forthwith give notice thereof to the Judge, and if no return be made he shall notify the Judge.

This is taken from old rule 94.

The clerk should, to protect himself from liability, make a careful examination into the facts stated in the return before signing certificate.

195. In case the proceedings in any suit shall be hindered or delayed by the neglect or misconduct of the Clerk or Bailiff of a Foreign Court or of the Home Court, the Clerk or Bailiff causing the same shall forfeit all fees in such suit, and shall, in addition thereto, pay any loss or damage that may result from such hindrance or delay to the party suffering therefrom.

This is similar to old rule 98.

The sureties of the clerk or bailiff would be responsible for the neglect or misconduct: *see* section 37, vol. 1, p. 32; *see* also pp. 27-30.

196. No Clerk or Bailiff shall, directly or indirectly, purchase or be concerned in the purchase, or have any personal interest in a suit or judgment or claim in suit, in the Court of which he shall be an officer, and any Clerk or Bailiff transgressing this rule shall be subjected to the loss of his office.

This is similar to old rule 99.

The clerks and bailiffs must be absolutely independent, and must not allow their interest to conflict with their duty in any way. Clerks and bailiffs are also prohibited from purchasing goods sold under execution: *see* section 234, vol. 1, p. 320.

Rules 197-199

197. No Clerk or Bailiff shall, either by himself or his partner in business, be engaged either directly or indirectly as agent for any party, during the conduct of the cause in Court,—and any Clerk or Bailiff transgressing this rule shall be subjected to the loss of his office.

Similar to old rule 100.

Clerks and bailiffs are also prohibited from taking any commission, charge, expense, fee, or reward, for or in connection with the collection of any debt or claim which has been, or may, or can be sued in their courts: *see* section 58, vol. 1, pp. 47, 48.

198. In case a defendant determines to settle an action or pay the demand of a plaintiff, or pays money into Court under section 125, such settlement of the amount or payment of money into Court, must be made with or to the Clerk of the Division Court in which the suit was entered, or the proceedings thereof are being carried on.

This rule is merely declaratory of the fact that the court from which the process issued is the only court in which any proceeding can be taken, notwithstanding services made through a foreign court: *see* rule 154 (*b*).

199. No Bailiff of any Court shall have the right or be allowed to take or receive any money from any defendant or party in any cause, either in settlement or on account of any debt sued or claimed, or of the costs thereon, except in cases in which he has an execution in his hands against the defendant or party, or a warrant of commitment, and no Clerk shall have the right or be allowed to take or receive any money from any defendant or party in any cause, either in settlement or on account of any debt or costs, unless a suit has been commenced in his own Court for the recovery thereof, or the claim is actually in his hands for suit, or a transcript of judgment against the defendant or party has been sent to him from some other Court.

The duty of a bailiff prior to his receiving an execution is merely to serve papers entrusted to him for that purpose.

The duty of a clerk under this rule, and under section 58, is to collect no money except after a claim has been delivered to him for suit, or judgment has been actually recovered in another court and a transcript has been received by him.

Judgment Summons.

Rules 200-202

200. A party having an unsatisfied judgment, who desires to proceed under the 235th and subsequent sections of the Act, shall file with the Clerk an affidavit (Form No. 33), or to the like effect, and thereupon a summons (Form No. 54), bearing the proper new number in its order, shall be issued; if the proceeding be taken in a Division Court other than that in which the judgment was entered, there shall be delivered to the Clerk a transcript of such judgment.

See section 235, vol. 1, p. 321.

Transcript of such judgment.—If the judgment is recovered in the court in the county where the defendant resides or carries on business, a judgment summons may be issued from such court. If he resides in another county, a transcript must be issued to the division in which he resides or carries on business.

201. In order that a party who after examination has been discharged by the Judge may not be again summoned for examination at the suit of the same or any other creditor, without notice of such examination, every Clerk shall keep a book in which entries may be made in the form of an index, to be called the "Judgment Debtors' Book," (Form 8) in which shall be entered the date when each judgment debtor was examined and discharged by the Judge, together with the number and style of the cause in which he was summoned and examined.

This is a new provision, and is intended to secure to a judgment debtor the protection prescribed by section 239: *see* vol. 1, pp. 324, 325. For form of affidavit for the purpose of obtaining an order under such section, *see* form 34.

The clerk should, before issuing a judgment summons, examine the judgment debtors' book to ascertain whether such judgment debtor has been discharged, and if he finds his name entered therein he should refuse to issue the summons; otherwise he may render himself liable to action.

202. In case a judgment debtor who resides more than three miles from the place of the sitting of the Court, is summoned under section 235 of the Act, and does not attend, such non-attendance shall not be considered wilful, unless he shall have been paid or tendered, when summoned, a sum equal to seventy-five cents for

Rules 202-204

his day's attendance, and ten cents for each mile from his place of residence to the place of such sitting of the Court. Such payment to be costs in the cause unless otherwise ordered by the Judge.

This is a new provision. Under the law as it has hitherto existed, a judgment might be recovered against a person residing or carrying on business in a part of the county remote from the place of sitting of the court; and although poor and unable to pay his debts he was compelled, under the penalty of imprisonment, to travel to the court for the purpose of examination at his own expense.

Warrants of Commitment.

203. Warrants of commitment shall bear date on the day on which the order for commitment is made, and shall have endorsed thereon the amount of debt and costs on such proceedings, or of fine and costs up to the time of its delivery to the Bailiff for execution, and shall continue in force for six calendar months from such date and no longer, unless renewed by an *ex parte* order of the Judge upon affidavit showing the cause of the non-execution, and that the moneys payable thereunder have not been satisfied. (Forms 162 and 162*a*.)

Taken from old rule 161.

Hitherto a warrant of commitment has been in force for three months from the date of the order, and no longer, unless renewed. The time is now extended to six months. The day of the making of the order is not included. Upon the warrant is endorsed the full amount due at the time of its delivery to the bailiff; and the bailiff is required by rule 187 to endorse his fees thereon. The debtor may, therefore, upon an inspection of the warrant, ascertain the full amount he must pay to obtain his discharge. The amount must be paid to the clerk of the court, and upon his certificate the debtor will be entitled to his discharge: *see* section 244, vol. 1, p. 333. The debtor may also be discharged by leave of the judge.

204. Upon application (which may be made *ex parte*) founded upon affidavit, showing to the satisfaction of the Judge the cause of the non-execution of such warrant and that the moneys payable thereunder have not been satisfied, such Judge may, during the continuance of the warrant of commitment, order that the same may be renewed for a further period. Such renewal shall not be for a period exceeding six calendar months, and may, in the discretion of the Judge, be for a less period.

This rule is a modification of the concluding part of rule 203. It limits the renewal to six months. The application must be made while the first warrant is in force: *see* notes to rule 25. Only one renewal is provided for, and it would seem that the life of an order of commitment cannot exceed twelve months. Rules 204-206

205. The renewal of a warrant shall be made by the Clerk, and shall be marked on the margin of the warrant, or by endorsing thereon—"Renewed by Judge's order for calendar months from the day of , A.D. 18 .

X.Y.,
Clerk."

The order should be filed with the clerk, who will then make the necessary endorsement. The clerk should enter the order and the renewal in the procedure book.

Payment on Arrest.

206. When a warrant of commitment is issued, the defendant may, at any time before his body is delivered into the custody of the gaoler, pay to the Bailiff the amount endorsed on the warrant, as that on the payment of which he may be discharged, and the Bailiff shall forthwith give a receipt therefor. On receiving such amount, or at the request of the judgment creditor, in writing, the Bailiff shall discharge the defendant, and shall, within twenty-four hours after receiving such amount, pay over the same to the Clerk of the Court who issued the warrant.

This rule is similar to English C.C.R., 1889, Ord. xxv., r. 24.

The bailiff is entitled to receive the amount endorsed on the warrant, and must then discharge the prisoner. No provision seems to be made for the costs of the bailiff of executing the warrant, and the bailiff is not required to endorse his fees upon the warrant until he delivers the party arrested to the gaoler.

Discharge on request of judgment creditor.—If the judgment creditor requests in writing that the debtor be discharged, and the bailiff receives such request prior to delivering the prisoner to the gaoler, he has no option but to discharge him.

Payment to plaintiff.—If the debtor pays the debt and costs to the execution creditor, but makes no application to the court, and he is subsequently arrested by the bailiff, the arrest is legal: Davis v. Fletcher, 2 E., B. & E. 271.

207. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the Court or a Judge, if satisfied that it has been so commenced, through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person or persons to be substituted or added as plaintiff or plaintiffs, upon such terms as may seem just, but no person shall be added or substituted as a plaintiff without his own consent.

Taken from C.R. 445 and C.R. 324 (*b*). English C.C.R., 1889, Ord. xiv., r. 1.

Material necessary.—It should be shown in the material brought before the judge that the action had been commenced in the name of the wrong person as plaintiff, or that it was doubtful whether it was commenced in the name of the right plaintiff, and that it had been so commenced through a *bona fide* mistake, and that it was necessary for the determination of the real matter in dispute, that is, in the action so commenced, to add the proposed plaintiffs. The real matter in dispute means the real matter in dispute in the action commenced, and no order can be made for the addition of a plaintiff who would not be a proper party to the action commenced, but would be a proper party in an action distinct from the action commenced, and one which the plaintiff in that action could not maintain: Tinning v. Bingham, 16 Pr. 110; New Brewery Co. v. Hammah, W.N. (1877) 35.

Notice of motion.—The application must be made either at the trial or by notice of motion or summons: *see* rule 249. The order would not be made *ex parte*: Tildesley v. Harper, 3 Ch.D. 277. The application can only be made by a plaintiff: Clowes v. Hilliard, 4 Ch.D. 413.

What is a bona fide mistake?—If, after action brought, it is discovered that some person ought to have been included as plaintiff, as where a new partner had come into a firm before the contract or dealing in question, such person might be added as plaintiff: Turquand v. Fearon, 4 Q.B.D. 280. If an action be brought upon a document, *e.g.*, a covenant or guarantee, and it be discovered after action that in order to obtain relief from that document or to have it construed, it is necessary that some other person should be made plaintiff, the addition of such person would be allowed: Ayscough v. Bullar, 4 Ch.D. 341. A mistake may be either of law or fact: Ducket v. Gover, 6 Ch.D. 82.

Should an action be brought for debt and it should be discovered that the debt had been assigned (or, if brought by the assignee, that it did not pass under an assignment), it would be proper to add either the assignee or the original debtor, as the case might be, so as to determine the real question: Woodward v. Shields, 32 C.P. 282. In such a case, if the original plaintiff were willing and the party legally entitled were really the beneficial owner of the debt, he might be given the conduct of the action: Emden v. Carte, 17 Ch.D. 169.

Consent of adult plaintiff.—The Judicature Act requires the consent of the party so added to be in writing. This rule does not impose any such condition. The judge must, however, be satisfied that he is a consenting party, as the defendant must not be exposed to the risk that the adult plaintiff may come at some future period and ask to have the proceedings stayed on the ground that he did not authorize them, so that the plaintiff cannot get the costs from him: *per* Field, J., Tarquand v. Fearon, 4 Q.B.D. 283. **Rules 207-210**

208. In case it is found that a wrong party, as defendant, primary debtor or garnishee, has been sued or served with a summons, and it is desired to add a party under section 108, the Judge may grant an order therefor after action commenced *ex parte*, provided those persons who have been already made parties have not been served with the summons. If the application be made after service of the summons, the order adding other parties, as defendants, primary debtors or garnishees, must only be granted upon notice to those parties who have been already served with the summons.

This rule has no exact counterpart either in the Consolidated Rules or in the English C.C.R. It is, however, declaratory of the practice which should be followed under section 108.

If any party has been served with process, he is entitled to see that no other person is added as a party thereto without notice to him. If he has not been served, the action is in the same condition as if originally commenced against all. For analogous rule, *see* C.R. 324 (*a*) and (*c*).

209. In case an amendment is directed or allowed to be made at the trial, it shall not be necessary to draw up or issue an order therefor; the amendment may be at once made, or a minute of the amendment to be made may be entered in the procedure book. (C.J.R. 446.)

This applies only to amendments directed to be made at the trial. It is not, however, necessary in other cases that any formal order should be drawn up, unless the judge should otherwise order: *see* rule 243. Should the judge amend the summons, it is submitted that it would nevertheless be proper for the clerk to enter a minute of the amendment in the procedure book.

210. Where several persons are made defendants, and all of them have not been served, the name or names of the defendant or defendants, who have not been served, may, at the instance of either party, be struck out by order of the Judge, on such terms as he shall think fit; and the cause shall then proceed against the party served as to set-off, counterclaim and other matters, as if all the defendants had been served.

Rules 210-213

Taken from old rule 113.

See also English C.C.R., 1889, Ord. xiv., r. 10, which is substantially identical. The course provided by this rule is also provided for by rule 116.

211. Any application to add or strike out, or substitute a plaintiff or defendant may be made to the Judge at any time before trial, by motion or notice, or at the trial of the action in a summary manner.

Identical with C.R. 325 : *see* Holmested & Langton, 361.

212. In any case wherein it appears to the Judge, that a party, defendant, has been improperly added, merely for the purpose of giving the Court jurisdiction or colorable jurisdiction, over a cause of action, to the prejudice or inconvenience of another defendant or otherwise, the Judge may, in his discretion, strike out the name of such party and disallow all costs that may have been incurred by making him a defendant, and allow to him such costs as he has been put to by reason of having been made such defendant; and thereby leave the remaining parties to their rights, whatever they may be, as to jurisdiction or otherwise.

The principle of this rule was enunciated by Chief Justice Hagarty in *Re* Holland v. Wallace, 8 Pr. 186, where it was held that a plaintiff proceeding against a primary debtor and a garnishee, in a court which would not have jurisdiction against the primary debtor alone, it was necessary to prove a garnishable debt in the hands of a garnishee; otherwise there would be no jurisdiction. The addition of a party as a defendant to justify an order under this rule must be improper. If the plaintiff has a cause of action against the party so added, and the court has jurisdiction to deal with such cause of action, and the other parties are properly defendants in the action, it is submitted that the judge would have no power to strike out the name of such party.

Disallow all costs.—The plaintiff would be allowed only such costs as would have been incurred if such party has not been added as a defendant.

213. When a person, other than the defendant, appears at the hearing, and admits that he is the person whom the plaintiff intended to charge, his name may be substituted for that of the defendant, if the plaintiff consents, and thereupon the cause shall proceed, as if such person had been originally named in the summons; and, if necessary, the hearing may be adjourned on

such terms as the Judge may think fit; and the costs of the person originally named as defendant shall be in the discretion of the Judge.

Similar to old rule 115, and to Ord. xiv., r. 4, English C.C.R., 1889.

Plaintiff's consent.—The plaintiff must consent to the substitution of the party appearing as defendant. The consent need not be in writing.

Hearing may be adjourned.—If the party so appearing consent thereto, he need not be served with summons; but unless he do consent, it is necessary that the original summons be first amended and served upon him: *see* section 108, sub-section 3, vol. 1, p. 142.

Statute of Limitations.—The action against such substituted defendant would be deemed to have commenced only from the date of the order adding him as a defendant; and if the Statute of Limitations would have run in his favor at that time, he will be entitled to rely on the defence: section 408, sub-section 3.

214. Where a party sues, or is sued in a representative character, but at the hearing it appears that he ought to have sued or been sued in his own right, the Judge may, at the instance of either party and on such terms as he shall think fit, amend the proceedings accordingly, and the case shall then proceed in all respects, as to set-off, counterclaim and other matters, as if the proper description of the party had been given in the summons.

Substantially similar to old rule 116, and Eng. C.C R., 1889, Ord. xiv., r. 5.

See notes to rule 100.

215. Where a party sues, or is sued in his own right, but at the hearing it appears that he ought to have sued or been sued in a representative character, the Judge may, at the instance of either party and on such terms as he shall think fit, amend the proceedings accordingly, and the case shall then proceed in all respects as to set-off, counterclaim and other matters, as if the proper description of the party had been given in the summons.

Substantially similar to old rule 107, and English C.C.R., 1889, Ord. xiv., r. 6.

See notes to rule 100.

Rule 216

216. No action or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Judge may in every action or matter, deal with the matter in controversy so far as regards the rights and interests of the parties actually before him. The Judge may at any stage of the proceedings, either upon or without the application of either party, and in such terms as may be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties be added, whether plaintiffs or defendants who ought to have been joined, or whose presence before the Judge may be necessary in order to enable him effectually and completely to adjudicate upon and settle all the questions involved in the action or matter. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every person whose name is so added as defendant shall be served with a copy of the order so adding him, and the proceedings as against such party shall be deemed to have begun only on the service of such order.

See old rule 110.

This rule is taken from C.R. 324, and is substantially identical therewith.

Misjoinder.—Making persons party to an action, whether as plaintiffs or defendants, who are not properly parties to the relief claimed, is misjoinder. Joining too many persons as plaintiffs will not create any practical difficulty. If a person should be improperly joined as a defendant as if he were not properly a party to the relief claimed by the plaintiff, he may move to have his name struck out of the proceedings, and thus relieve himself of the expense of defending the action: Carter v. Clarkson, 15 Pr. 379.

Nonjoinder.—When two or more parties are jointly liable, and the plaintiff sues only some or one of them, those sued are entitled as of right to have all the others within the jurisdiction added as defendants: Kendall v. Hamilton, 4 App. Cas. 504; Pilley v. Robinson, 20 Q.B.D. 155; Wilson v. Balcarre, (1893) 1 Q.B. 422; Gildersleeve v. Balfour, 15 Pr. 293. The defendant should raise any objection of this kind at the earliest possible moment: Sheehan v. Great Eastern Ry. Co., 16 Ch.D. 59; or possibly he might object by his notice of defence, and it would then be necessary for the plaintiff to move to add the necessary parties: Nobels Explosives Co. v. Jones, 25 W.R. 653; Lydall v. Martinson, 5 Ch.D. 780. The court may act in the matter without motion. The order cannot be made after final judgment: Attorney-General v. Corporation of Birmingham, 15 Ch.D. 423. Where an order is not made before, or at the trial, it might possibly be made on terms on a motion for a new trial: Adams v. Watson Manfg. Co., 15 O.R. 218; 16 A.R. 2.

Consent in writing.— It is noticeable that under this order no person can be added as a plaintiff without his own consent in writing. Rule 207 does not impose the necessity for consent in writing. If the consent should not be filed before the amendment, it might be filed afterwards: Jones v. Miller, 24 O.R. 268.

Service of Order.—This rule requires that the order merely be served, while section 108 of the Act requires the summons to be amended and served. It is submitted that the practice prescribed by the statute should be followed, and that the order should also be served as provided for in this rule. *See* rule 221.

217. Where it appears at a trial that a less number of persons have been made plaintiffs than by law required, the name of the omitted person may, at the instance of either party, be added, by order of the Judge, on such terms as he shall think fit, and thereupon the action shall proceed, in all respects, as if the proper persons had been originally made parties; and if such person shall, either at the trial or at some adjournment thereof, personally or by writing, signed by him or his solicitor, consent to become a plaintiff in manner aforesaid, the Judge shall then pronounce judgment as if such person had originally been made a plaintiff, but if such person shall not consent to become a plaintiff in manner aforesaid, either at the trial or at the adjournment thereof, the action or matter shall be struck out.

This is similar to old rule 111.

The cases provided for by this rule are also practically provided for by rules 207 and 216: *see* notes to those rules.

218. Where the name or description of a plaintiff in the summons is insufficient or incorrect, it may be amended at the instance of either party, by order of the Judge, on such terms as he shall think fit, and thereupon the action shall proceed in all respects, as if the name or description had been originally such as it appears after the amendment has been made.

This is taken from old rule 108, and English C.C.R., 1889, Ord. xiv., r.7.

See notes to rules 100, 214, and 215.

Rules 219-221

219. Where the name or description of the defendant in the summons is insufficient or incorrect, it may be amended at the instance of either party by order of the Judge, on such terms as he shall think fit, and thereupon the action shall proceed, in all respects, as if the name or description had been originally such as it appears after the amendment has been made; but if no objection is taken to the name or description, the action may proceed, and in the judgment and all subsequent proceedings founded thereon, the defendant may be named and described in the same manner.

Substantially similar to old rule 114, and English C.C.R., 1889, Ord. xiv., r. 8.

220. In actions or matters by or against a husband, if a wife or a husband be improperly joined or omitted, or if one of them be improperly substituted for the other, the summons may at the trial be amended at the instance of either party by order of the Judge, on such terms as he shall think fit, and thereupon the action shall proceed, in all respects, as if the proper person had been made party to the action.

Similar to old rule 109, and English C.C.R., 1889, Ord. xiv., r. 9.

221. Where a defendant is added or substituted, except where a defendant is substituted under Rule 313, an order shall be drawn up, and together with a copy of the summons and particulars of claim, and a notice setting forth the day and place upon and at which he is to attend at the court, shall be served upon him, according to the practice in the case of service of ordinary summons.

Similar to C.R. 326, except that under that rule service may be dispensed with. Also substantially similar to English C.C.R., 1889, Ord. xiv., r. 12. This rule is an exception from Ord. 243.

Dispensing with service.—The court would not have authority to dispense with service of order and summons, except the order should be made at the trial, and the defendant, the primary debtor, or garnishee or his solicitor consent thereto: section 108, vol. 1, p. 142.

Where a Person Brought in does not Appear at the Trial.

222. If a person not originally a party to the action, who has been served with a copy of an order adding him as a party does not appear at the trial, the Judge may proceed with the trial, notwithstanding, and give such judgment or make such order as may be just against the person so served and not appearing, or may adjourn the trial, and give such directions and make such order as to costs as he shall think fit.

A person who is added as a party to the action is thereafter in the same position as if he had originally been made a party, and his non-appearance subjects him to the same penalty.

223. An action or matter shall not become abated by reason of the marriage, death or insolvency of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation or devolution of any estate or title *pendente lite*, and whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict of finding of the issues of fact and the judgment, but judgment may in such case be entered notwithstanding the death.

Similar to C.R. 620, and English C.C.R., 1889, Ord. xvii., r. 1.

The concluding clause is scarcely applicable to proceedings in the Division Court, as there is no interval between the verdict and judgment.

If the cause of action survive.—An action for injury to the person now survives to the executor of the plaintiff: Mason v. Peterboro, 20 A.R. 683; and it may now be said that all causes of action survive and continue, notwithstanding death, except in cases of libel and slander: R.S.O., 110, ss. 9 and 10. In other words, all actions cognizable in the Division Court survive. An action for the publishing of a false and malicious statement causing damage to the plaintiff's personal estate would survive: Hatchard v. Mege, 18 Q.B.D. 771. Such an action is not one of libel or slander: Ratcliffe v. Evans, (1892) 2 Q.B. 527. If a defendant dies, an action may be continued against his representatives under rule 225.

Change of Parties before Judgment.

224. Where by reason of any event occurring after the commencement of any action or matter, there shall be any assignment, creation, change, transmission or devolution of the interest, estate or title of any plaintiff

Rule 224 in any action or matter before judgment, the person to, or upon whom such interest, estate or title has come or devolved, may give notice thereof to the Clerk, with his name and address, together with an affidavit of the truth of the fact stated in such notice.

(*a*) And thereupon such Clerk shall cause a copy of such notice to be given to the defendant in the action or matter, in which shall be embodied a notice that unless upon a day to be named therein he appears and shows cause against the same, the person to or upon whom such interest, estate or title has come or devolved, will be substituted for, or made a joint plaintiff with, the plaintiff named in the original summons.

See old rule 153.

This rule is taken from C.R. 622, and is substantially identical with English C.C.R., 1889, Ord. xvii., r. 2.

By R.S.O., c. 110, s. 9, it is enacted that: "The executors or administrators of any deceased person may maintain an action for all torts or injuries to the person or to the real or personal estate of the deceased, except in cases of libel and slander, in the same manner and with the same rights and remedies as the deceased would, if living, have been entitled to do, and the damages, when recovered, shall form part of the personal estate of the deceased, but such action shall be brought within one year after his decease." A personal representative may, under this rule, take the benefit of the above section in an action for personal injuries brought by the deceased, and is not bound to commence a new action: Mason v. Town of Peterborough, 20 A.R. 683.

The personal representatives of a deceased plaintiff must file an affidavit setting forth the fact of the death and of their appointment. They must also give notice to the clerk with their names and addresses, upon which the clerk will be entitled to send notices to their address, as provided in rule 241.

Notice to defendant.—The clerk must send a copy of the notice which the personal representatives have given him to the defendant or his solicitors by registered letter or deliver the same to him: *see* rules 169 and 241. The clerk must embody a notice that an order will be made, adding the personal representatives as plaintiffs. The length of time to be fixed by the notice is not prescribed. It is submitted that not less than two clear days' notice should be given.

Assignment.—Similar remarks apply to cases where any part of the plaintiff's title has become vested in any other person by assignment, creation, change, transmission, or devolution. For forms, *see* additional forms.

Substitution of a Defendant.

225. Where, by reason of any event occurring after the commencement of any action or matter, there shall be any assignment, creation, change, transmission or devolution of the liability, interest, estate or title of any defendant, in any action or matter, before judgment, the plaintiff, or the defendant or the person to or upon whom such liability, interest, estate or title has come or devolved, may, in like manner, give notice to the Clerk, who shall take proceedings thereon, similar to those prescribed by the last preceding rule, and a defendant may be substituted or added, as the case may be, in manner similar to that provided in such rule for the substitution or addition of a plaintiff.

Similar to English C.C.R., 1889, Ord. xvii., r. 3.

The same proceedings must be taken as are prescribed by rule 224.

Either the plaintiff or defendant, or his representatives or assignees, may take the proceedings.

Change of Parties or New Capacity.

226. Where, by reason of any event occurring after the commencement of any action or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action or matter, it becomes necessary or desirable that any person, not already a party, should be made a party, or that any person, already a party, should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party may be obtained, before or at the trial, on application to the Judge, upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence.

Similar to English C.C.R., 1889, Ord. xvii., r. 4.

An order under this rule must, unless otherwise directed, be served on the continuing parties or their solicitors, and also on such new parties, unless the person applying be the only one, and unless discharged or varied will be binding on such parties. The English County Courts have jurisdiction in a large

Rules 226-229

number of matters besides those over which the Division Courts have jurisdiction; *e.g.*, actions to recover possession of small tenements; actions for recovery of land where the annual value does not exceed £50 per annum; actions properly or improperly commenced in the High Court and transferred to the County Court; actions for administration, execution of trusts, foreclosure and redemption; specific performance; partnership; partition; actions under The Settled Lands Act; proceedings for maintenance of infants, and proceedings under The Trustees' Relief Acts; and this rule and those following it are applicable to such classes of actions rather than to those which are within the jurisdiction of the Division Courts.

Notice of Order Therefor.

227. An order obtained as in the last preceding rule mentioned shall, unless the Judge shall otherwise direct, be served upon the continuing parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith, who is not already a party to the action or matter, shall be bound to appear at the trial, and in the same manner as if he had been served with a summons.

Similar to English C.C.R., 1889, Ord. xvii., r. 5.

228. Where any person being under no disability, or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the action or matter, shall be served with such order as mentioned in rule 226, such person may, at or before the trial, apply to the Judge to discharge or vary such order.

Similar to English C.C.R., 1889, Ord. xvii., r. 6.

An application to vary or discharge the order may be made by notice or summons: *see* rule 249. Service may be made upon the continuing parties in the manner prescribed by rule 241.

229. Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the action or matter, is served with any order as mentioned in rule 226, such person may, before or at the trial, apply to the Judge to discharge or vary such order.

Similar to English C.C.R., 1889, Ord. xvii., r. 7.

See notes to preceding rule.

230. When the plaintiff or defendant in an action or matter dies, and the cause of action survives, but the person entitled to proceed fails to appear on the return day, the trial may be adjourned or judgment may be entered for the defendant, or (*as the case may be*) for the person against whom the action or matter might have been continued; and in such case if the plaintiff has died execution may issue, as provided by rule 140.

Similar to English C.C.R., 1889, Ord. xvii., r. 8.

If a plaintiff dies, it seems to be necessary that his personal representative should appear upon the return of the summons. If he has not obtained probate or letters of administration, the trial may be adjourned. If he does not appear, judgment may be given against him; but no execution can be issued thereon unless proceedings in the nature of a *scire facias* are taken, as provided by rule 140. If the defendant has died, it would be necessary for the plaintiff to revive the proceedings as prescribed by rule 225 before he could take judgment against his representatives, and rules 89 to 99 would then be applicable.

231. Where a plaintiff or defendant is substituted, or added, or there is a change of parties under these rules, the procedure book shall show the same by proper entries thereof, and if necessary the cause thereafter may be entered in a new place in the procedure book, retaining the original year number of the cause, and all subsequent proceedings are to be carried on under the altered title with the same year number.

Taken from English C.C.R., 1889, Ord. xvii., r. 9.

Altered title.—After the entries in the procedure book are made, the altered title only will be used, and may be as follows:

	Between	A.B., executor of X.Y., the original plaintiff, deceased,	Plaintiff,
		and C.D.,	Defendant;
Or,	Between	A.B.,	Plaintiff,
		and C.D., executor of X.Y., deceased,	Defendant.

GENERAL RULES.

232. Claims by or against husband and wife may be joined with claims by or against either of them separately.

Taken from old rule 120, and similar to C.R. 345.

Rules 233-235

233. The Court has no jurisdiction to try an action upon a note of hand, whether brought by the payee or any other person, the consideration, or any part of the consideration of which, was any gambling debt, or for spirituous or malt liquors, or other like liquors, drunk in a tavern or ale-house. The term "note of hand" in the Act and in this rule shall be held to include promissory notes, bills of exchange, cheques, orders for the payment of money, due bills, I.O.U.s. and all evidences of debt under the hand of the debtor.

Taken from old rule 124.

The first part of the section is substantially identical with sub-sections 1, 2, and 3 of section 69 of the Act: *see* vol. 1, pp. 53 and 65-68.

The term "note of hand" is now defined by the rule substantially as defined in vol. 1, p. 68.

Infants.

234. A minor may sue in a Division Court for any sum not exceeding $100, due to him for wages, in the same manner as if he were of full age.

Similar to section 76 of the Act.

See vol. 1, pp. 99-102.

235. Where a minor applies to enter a suit for any cause of action other than for wages, or is a claimant in an interpleader proceeding, he shall procure the attendance of a next friend at the office of the Clerk, at the time of entering the same, who shall sign an undertaking (Form 194) to be responsible for costs; and the cause shall proceed in the name of the infant by such next friend, but no order shall be necessary for the appointment of such next friend. If the plaintiff or claimant fail in, or withdraw, or discontinue his suit, and do not pay the amount of costs awarded against him, proceedings may be taken for the recovery of such amount from the next friend, as for the recovery of any judgment debt.

Similar to old rule 126.

A next friend is not a party to the action: *see* notes to rule 2. Any person, except the defendant, may commence an action as next friend of an infant: *Re* Taylor, W.N., 1881, p. 81; Lewis v. Nobbs, 8 Ch.D. 591. A father having no adverse interest to his children will be preferred to a stranger: Woolf v. Pemberton, 6 Ch.D. 19. The next friend need not be a solvent person: *Re* McConnell, 3 Ch. Ch. R. 423. A married woman would not be a good next friend: Thynne v. St. Maur, 34 Ch.D. 465. If a suit should be instituted on behalf of an infant without a next friend, it might be dismissed with costs, to be paid by the party entering it: Daniels' Ch. Pr., 6th ed., 105.

Formal Objections.

236. No proceeding shall be defeated by any formal objection.

The proceeding is not to be defeated by a formal objection, but amendments may be directed when necessary on such terms as may appear just: *see* rule 239.

237. Non-compliance with any of these rules shall not render any proceeding in any action or matter void, unless the Judge so directs, but such proceeding may be set aside, either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge thinks fit.

Similar to C.R. 442.

Where a notice of motion has been irregularly given, but the opposite party has not been injured by the irregularity, it may be disregarded and the motion heard: Davison v. Breson, 22 Ch.D. 504.

"I have no doubt the meaning of the rule is that the court or judge may, after an irregular proceeding has been taken, either set it aside for irregularity, or amend it, or otherwise deal with it as the court shall think fit; but it is not to be treated as void": *per* Kay, J., Petty v. Daniel, 34 Ch.D. 180.

Judgment irregularly signed.—A judgment irregularly signed is not a mere non-compliance with the rules which may be remedied hereunder: Anlaby v. Prætorius, 20 Q.B.D. 764.

238. No application to set aside process or proceedings for irregularity shall be allowed, unless made within a reasonable time, nor if the party applying has taken a fresh step, after knowledge of the irregularity.

Similar to C.R. 443.

Fresh step.—The filing of dispute notice would be a fresh step within this rule. If a cause of action should be improperly joined with an action of replevin contrary to rule 41, it would be an irregularity within this rule: *Re* Derbon, 36 W.R. 667.

Intervener.—A stranger cannot set aside proceedings for irregularity: Holmested & Langton, 459.

Prohibition.—A mere irregularity in practice is not ground for prohibition: Fee v. McIlhargey, 9 P.R. 329; Carter v. Smith, 4 E. & B. 696; and other cases cited in vol. 1, p. 60.

LAW SOCIETY LAW LIBRARY

Rules 239-241

239. The Judge may at any time, and on such terms as to costs and otherwise as to him may seem just, amend any defect or error in any proceedings; and all such amendments may be made as may be necessary, for the advancement of justice, determining the real question raised by or depending on the proceedings, and best calculated to secure the giving of judgment according to the very right and justice of the case.

The first part is taken from old rule 11[illegible]

The powers of amendment now giv[illegible]e most extensive: *see* notes to rule 3.

240. All notices required by these rules, or by the practice of the Court, shall be in manuscript or print, unless expressly authorized by the Court, or a Judge, or by these rules to be given orally.

All notices required to be given by a clerk must be in writing, under 52 Vict., c. 12, s. 25: *see* vol. 1, p. 162. It is submitted that any notice under that section could not be given orally, even though so authorized by the court or judge.

Parties to Leave Address with Clerk.

241. Whenever the plaintiff shall enter his claim for suit, or the defendant or any other party shall give notice of set-off, counterclaim or other defence, he shall give to the Clerk his address, or that of his solicitor or agent, and the delivery of any notice to such plaintiff or defendant or other party, his solicitor or agent, or the mailing thereof by the Clerk to such address, shall be a sufficient service, but the Judge may, in his discretion, put off a trial, or set aside, or stay proceedings, on his being satisfied that there is good cause so to do.

This is substantially similar to old rule 125.

Old rule 125 enumerated as grounds for putting off trial, or setting aside or staying proceedings:—(1) Letter had not reached the party; or, (2) that there had not been sufficient time after service of the process for either party to be prepared for trial or to get the notices served.

Or any other party.—These words are wide enough to include garnishees; interveners under section 197; claimants in interpleader proceedings; and any other person served with notice of or attending any proceeding: *see* rule 2, sub-rule 2. The words are, however, limited by those following to cases in which notice is given of set-off, counterclaim, or other defence.

Set-off, counterclaim, or other defence.—These words limit the notices with which the address is required. They are, therefore, scarcely sufficiently exhaustive. A claimant putting in a claim to goods seized, or an intervener claiming money attached, or any other party giving a notice in a proceeding, should be required, upon entering the first notice, to give his address for service. The words probably include all first notices to be given by garnishees if in the nature of a defence, whether the debt is denied, or the claim of some other party is brought to the notice of the court.

Mailing thereof.—When any notice is sent by mail the letter containing the same must be registered : *see* rule 169.

Insufficient service.—The rule is somewhat weak in not providing what shall be sufficient service in the event of no address being left as required. The clerk has apparently no right to refuse a claim, set-off, counterclaim, or defence because no address is given. Every clerk should in all cases, however, request that the address for service be left with him. No means are provided for communicating the address for service to the other parties to the action. The plaintiff should be required to insert the same in his particulars of claim, which are to be annexed to the summons : rule 150; and the clerk should be required to insert in the notice, to the plaintiff, or other party or parties, of the entry of any defence, or the taking of any other proceeding, the address for service given pursuant to the rule : *see* vol. 1, p. 254.

Good Cause.—It was scarcely necessary to enact the concluding clause, as ample power to adjourn is conferred by section 118. Some of the causes for adjournment will be found enumerated in vol. 1, pp. 167 and 168. For good cause the judge would have inherent power to stay proceedings. Should the stay, however, amount to a refusal to try the action, "good cause" would be reviewable on a motion for a mandamus : *see* vol. 1, p. 64.

As to Unauthorized Forms and Proceedings.

242. All proceedings, books and documents shall be in forms similar to the forms to these rules appended, where the same are applicable, and no printed forms shall be used by any Clerk or Bailiff of a Division Court unless in accordance with the forms appended to these rules, and if an unauthorized form shall be used no fee shall be payable to the officer in respect thereof, and in cases where no forms are provided, parties shall frame the proceedings or documents using as guides those appended to these rules.

(*a*) Any printed forms or books which, with the approval of the Judge, have been used previous to the framing and approval of these rules, may be used, unless and until the Judge shall otherwise order.

Taken from old rule 148.

Rules 242-245

Unless in accordance with the forms appended.—The old rule required the forms first to be approved by the judge as being in accordance with the various forms.

Where no forms are provided.—The editors have framed the forms appended to this volume, in addition to those which are authorized by the rules. The forms numbered from 1 to 253 are authorized, and no printed form is allowable, except in accordance therewith. In framing the other forms, the editors have obeyed the injunction of the rule and used the various forms as guides, and have exercised great care in endeavoring to render them as reliable as possible. In many cases the forms are adapted from those prescribed by the English C.C.R., 1889.

243. Except where otherwise provided by statute or by these rules, no order giving leave to take any proceeding need be drawn up or served unless the Judge shall otherwise order; but such leave shall be minuted in the procedure book.

This is a new provision, and is taken from English C.C.R., 1889, Ord. xxiii., r. 2.

Payment into Court.

244. When the plaintiff shall, in accordance with the 123rd or 126th sections of the Act signify to the Clerk his intention to proceed for the remainder of his demand, and such signification shall be given within three days after he received notice of the payment into Court, but after the rising of the Court at which the summons was returnable, the case shall be tried at the then next sittings of the Court, and be put upon the list for that Court in the regular order, but upon application to him at any time the Judge may further postpone the trial.

Taken from old rule 129.

Adjournment.—The concluding words as to adjournment are new: *see* section 118, and notes thereto; also notes to rule 241.

245. When an action has been stayed, under the provisions of section 123 or of section 126 of the Act, the Judge shall have power, upon application made for that purpose by the plaintiff, explaining in a satisfactory manner his omission to signify his intention to proceed, and after hearing the parties, to remove such stay and to allow the action to proceed, upon such terms as he shall deem just.

This rule is new.

Remove such stay.—Hitherto, upon the omission of the plaintiff to give notice *in writing* of his intention to proceed for the remainder of the claim, the action became at once stayed, and no power existed either to extend the time or to remove the stay. A verbal notice was insufficient, and prohibition would be ordered on any attempt to proceed in violation of the statutory stay of proceedings: *Re* McGregor v. Norton, 13 P.R. 223. The stay should be removed in all cases where the plaintiff has all along been desirous of proceeding and the omission to give notice is explained, and the application for the removal of the stay is made promptly.

246. In an action of detinue the defendant may with a tender of the subject of the action for the detention whereof the action is brought, pay money into Court as compensation for damages for the detention thereof, and for injury caused thereto, or either or both, with costs of the action.

(*a*) Where the defendant is desirous of paying money into Court, pursuant to this rule, the practice respecting the same shall, in all respects, be regulated by that under which a defendant may pay money into Court in other actions as provided by the Act and these rules.

This is a new rule. It extends the practice in replevin prescribed by rules 61 and 62 to the action of detinue. In an action of detinue the plaintiff is entitled to a judgment that the defendant do deliver to the plaintiff the property in question in the action forthwith, and also that the defendant shall pay to the plaintiff the value of the goods in case the same are not returned, and also damages and costs, and the plaintiff is entitled to an execution (form 161) for the recovery of the goods. For form of judgment, *see* form 128. The value of the goods must be ascertained and stated in the judgment. Phillips v. Jones, 15 Q.B. 859.

Prior to the enactment of this rule, in actions of detinue for goods, if all or any were delivered up after action brought, the plaintiff could not have judgment to recover the goods so delivered, or their value, but might have judgment to recover damages for their detention if he had sustained any damage, and judgment to recover the residue of the goods and their value and damages for their detention: Cressfield v. Such, 8 Ex. 159; Leider v. Rhys, 10 C.B. N.S. 369; and a plea averring the delivery of the goods to the plaintiff and his acceptance thereof, and payment into court of one shilling damages, was held good: Cressfield v. Such, 8 Ex. 159.

This rule enables the defendant to defeat the action by a mere tender of the goods without acceptance thereof, and payment of the damages into court. The defendant must pay a sufficient sum to cover the damages into court, and also the costs to date and postage, upon notice to plaintiff thereof. Sections 125 and 126, rule 171. If the plaintiff then recovers no further sum in the action than the sum paid into court, he is liable for the costs incurred after such payment. The money cannot be paid out to the plaintiff before trial

Rules 246-247

unless he accepts it in satisfaction. Any costs which are awarded to the defendant are deductible therefrom, and payable to the defendant: *see* rule 170.

Tender of the subject of the action.—The rule does not prescribe in what manner the tender is to be made. It is submitted that the tender should be made to the plaintiff personally, or to some person authorized to receive possession of the goods for him. It is submitted that it is not sufficient for the defendant merely to embody an offer to return the goods in his plea of payment into court. No right is given to the defendant to tender a portion of the goods. If a portion is tendered and accepted, of course the plaintiff's right to a judgment for their recovery or their value is at an end; but in the absence of the acceptance by him of any portion of the goods, the whole must be tendered in order to form with the payment into court a good defence.

Practice.—The sections of the Act relating to payment into court in any other actions are sections 125, 126, and 127. *See* vol. 1, pp. 176 to 179. The rules are 170, 171, 244, and 245.

Suitors' Moneys: How Payable.

247. All moneys are payable to the parties at the office of the Clerk, without the payment of any fee whatever. In case a party desires that money shall be transmitted to him, he shall give to the Clerk written directions as to the mode of transmission, and in the absence of such directions the Clerk shall not in any case transmit moneys of suitors. Moneys transmitted according to such directions shall be at the risk of the party who gave them. All necessary expenses incurred in transmission of moneys shall be borne by the party to whom transmitted, and may be deducted by the Clerk.

Taken from old rule 159.

Moneys payable at the office of the clerk.—In the absence of written directions to transmit the money, no action would be maintainable against the clerk, or his sureties, for failure to pay moneys in his hands without demand at the office: McLeish v. Howard, 3 A.R. 509.

This rule does not, in terms, impose upon the clerk the duty of transmitting the money in the manner requested by the party entitled thereto. The former rule required the clerk, upon receiving written directions, to transmit the money by post or to procure and transmit a post office order therefor. It would not be safe to commence any proceedings against a clerk for non-payment of moneys without an attendance at his office therefor, or an express refusal by him to pay the money sufficient to waive any such attendance.

It is submitted that a rule should be framed requiring the clerk, upon written directions, to transmit moneys by post or post office order, or by marked cheque or draft upon some chartered bank or other banking institution selected by the party. Inasmuch as the rule imposes on the party giving the directions the risk of transmission, there should be no objection to such a rule.

248. When the Clerk issues and transmits a transcript to the Clerk of any other division, the plaintiff or person entitled to such money, may by an order in writing, endorsed on the transcript, signed by such plaintiff, or person, direct the Clerk of the Foreign Court to pay over the money, when collected, to the transmitting Clerk or Clerk of the Home Court, or in any other way the person so entitled may desire and direct.

This rule is new. It is a modification of rule 134.

The clerk of the foreign court has no right to transmit the money to the clerk of the home court except upon the written order of the party entitled to the money. The clerk of the home court cannot act as agent of the party for the purpose of signing the order. There is nothing in the rule expressly requiring the clerk of the foreign court to obey the direction endorsed on the transcript.

249. All summary applications to a Judge in Chambers, other than applications for new trials, may be made on notice or by summons.

Similar to old rule 184.

This rule does not apply to applications made at the trial. It does not, of course, apply to *ex parte* applications. It is in the option of the party making the motion whether he will serve notice of motion, or whether he will apply in the first instance for a summons from the judge. The practice of proceeding by notice of motion has been found more convenient, and is adopted in all cases in the High Court and County Court: *see* C.R. 526.

For form of summons, *see* form 215.

250. When anything required by the practice of the Court to be done by either party, before or during the hearing, has not been done, the Judge may, in his discretion and on such terms as he shall think fit, adjourn the hearing to enable the party to comply with the practice.

Similar to old rule 140; Eng. C.C.R., 1889, Ord. xii., r. 15.

This rule confers on the judge power to enlarge the time for serving notices which, by the practice, should be served a certain length of time before the hearing. Somewhat similar powers are conferred in garnishee cases by section 198: *see* vol. 1, p. 282. The power can be exercised only by the adjournment of the hearing. In cases where steps are prescribed to be taken without reference to the hearing, no power is conferred to enlarge the time; *e.g.*, applications to change the venue under section 86; applications for renewal of summons under rule 25; applications for jury under section 156.

Rules 251-252

251. All applications to the Judge to set aside or stay any order, judgment, process or proceeding in any cause or matter in a Division Court, and all other applications, except in matters which may be disposed of upon an *ex parte* application to the Judge, and applications otherwise specially provided for by these rules, may be made *viva voce* at any sitting of the Court, if both parties be present, or upon affidavit, the opposite party having notice of such application and of the grounds thereof, and the order or decision of the Judge upon such application, if made at a sitting of the Court, shall be entered by the Clerk as in other cases of order made; if made upon affidavit elsewhere it shall be mailed to the Clerk or delivered at his office.

Taken from old rule 144.

At any sitting of the court.—Except where some special mode of making the application is provided for by the rules or by the Act, an application may be made to the judge at any sitting of the court. If both parties are present, he may hear evidence *viva voce* in support thereof. If both parties, however, should not be present, it would be necessary that notice of the application be given, together with the grounds thereof. At the option of the party making the application in court, the evidence in support thereof may be upon affidavit. No formal order need be drawn up if made at a sitting of the court, except, perhaps, an order coming within rule 221. If the order should not be made at the sitting of the court, the original should be mailed to the clerk, or delivered at his office.

Discontinuance of Action.

252. If the plaintiff desires to discontinue the action or matter against all or any of the parties thereto, he shall give notice thereof in writing (by post or otherwise) to the Clerk and to every party as to whom he so desires to discontinue, and the party receiving such notice may apply to the Judge for an order against the plaintiff for the costs incurred before the receipt of such notice.

(*a*) Where in a contested case the defendant or other party has prepared for trial, and before the opening of the Court, the plaintiff has withdrawn or discontinued the action, so short a time before the sitting of the Court, that the

defendant, or other party, cannot in the ordinary way be notified thereof, and without such notice the defendant *bona fide* and reasonably incurs expenses in procuring witnesses or in attending Court, or in a contested case where a counsel fee might be ordered to be taxed if the case had proceeded to trial and the defendant has employed counsel or a solicitor, who has attended the Court to conduct the defence for him, the Judge may, in his discretion, order the plaintiff to pay such costs, or such disbursements, or counsel fee, or such portion thereof as to him may seem just.

Taken from old rule 138.

Hitherto it has been necessary that the plaintiff discontinuing should pay the defendant's taxable costs, unless the judge should otherwise order; and in default of his doing so or proceeding to trial, the defendant was entitled to his costs as in ordinary cases of non-suit or default by the plaintiff.

Order for costs.—It will now be necessary to entitle a defendant against whom an action is discontinued to his costs (unless the plaintiff pays the same) to obtain an order therefor. The onus of obtaining an order is thus removed from the plaintiff to the defendant.

Contested case.—Rule 289 enumerates the conditions under which the case shall be considered contested. A counsel fee may be allowed in any case which is discontinued before trial, if counsel *bona fide* attends court. The judge must, of course, take into consideration all the circumstances in fixing the amount to be allowed.

Abatement.

253. In case, owing to any cause, a sitting of the Court is not held on the day appointed, and the Court is not adjourned, then, unless the Judge shall otherwise order, no matter or action which should have been tried or heard at such sitting, shall abate or be discontinued, but the same shall be considered to have been adjourned to the next sitting of the same Court, and shall, at such sitting, be entered upon the Judge's list of causes for trial.

Rules 253-256

This is a new rule.

Without this rule the action would be at an end. As said by Mr. Justice Osler, in Forbes v. Michigan Central Ry. Co., 20 A.R. 584, p. 589: "The power and jurisdiction of the inferior court to deal with a case thus coming before it is thus plainly defined and circumscribed. It comes on for trial on the day for which the defendant has been summoned. If it is not then tried or duly adjourned, it is at an end, though the plaintiff, no doubt, may bring a new action. There is no power to revive it or fix a new day for the appearance of the defendant and the trial." This rule effects a statutory adjournment of all cases which would have been tried if the court had been duly held at the time for which the parties were summoned: *see* 57 Vict., c. 23, p. 4.

254. Subject to rules of Court, the Judge of the County Court, or any other Judge acting for him, shall have power to sit and act at any time for the transaction of any part of the business of the Division Court, or for the discharge of any duty which by any statute or otherwise was formerly required to be discharged out of, or during the regular sitting of the Court.

This is a new rule.

Formerly, the Superior and County Courts were unable to entertain certain motions except in term, but terms are now abolished, and the courts may sit at any time: *see* Judicature Act, R.S.O., c. 44, ss. 56 and 57; C.R. 1255. This rule confers upon the judge of the Division Courts similar powers.

255. Where the plaintiff's claim, or defendant's counterclaim or set-off, consists of a promissory note, or other instrument, or is on a guarantee, it shall not be necessary to copy the instrument upon which the claim is founded, but it may be set forth in particulars with reasonable certainty.

This is a new rule.

For forms of particulars, *see* form 14.

Satisfaction of Judgment.

256. Any party to a judgment to whom accord and satisfaction or payment of such judgment has been made, may be required by the party against whom such judgment has been rendered, to enter, or to authorize the Clerk to enter satisfaction thereof, and in case of his refusal or neglect to do either, the Judge may, upon application therefor, order satisfaction to be entered by the Clerk in the procedure book.

Rules 256-259 are new. Hitherto, except by payment to the clerk of the amount of the judgment, satisfaction thereof did not appear upon the books of the court. **Rules 256-257**

Accord and satisfaction.—Prior to 1885, payment of a smaller sum was no satisfaction of a larger: Foakes v. Beer, 9 App. Cas. 609; but an agreement to accept a sheet of paper, or a stick of sealing-wax, or a bill of exchange, promissory note, or cheque for any amount, would be an accord and delivery of the article agreed upon, pursuant to the agreement, would be a satisfaction: Sibree v. Tripp, 15 M. & W. 23, 37; Curlewis v. Clark, 3 Ex. 375; Goddard v. O'Brien, 9 Q.B.D. 37; Bidder v. Bridges, 37 Ch.D. 406. "Accord and satisfaction imply an agreement to take the money in satisfaction of the claim in respect of which it is sent. If accord is a question of agreement, there must be either two minds agreeing, or one of the two persons acting in such a way as to induce the other to think that the money is payment in satisfaction of the claim, and to cause him to act on that view": *per* Bowen, L.J., Day v. McLea, 22 Q.B.D. 610, p. 613. If a cheque is sent for a smaller amount than a claim or judgment, and is marked in full, it is a question of fact whether the same was accepted in satisfaction of the payment: Day v. McLea, 22 Q.B.D. 610; Mason v. Johnson, 20 A.R. 412. By the Judicature Act, R.S.O., c. 44, s. 53, s-s. 7, it is enacted that "part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in satisfaction, or rendered in pursuance of an agreement for that purpose, though without any new consideration, shall be held to extinguish the application." In Canadian Bank of Commerce v. Jenkins, 16 O.R. 215, an agreement to accept a smaller sum in satisfaction of a debt was made, and it was held that a subsequent tender of the amount agreed upon, although not accepted, was sufficient to entitle the debtor to the benefit of this section: *see* also Davey v. Baines, 9 T.L.R. 29. Mr. Justice Osler, in Mason v. Johnson, 20 A.R., p. 415, in commenting upon this decision, said: "It is not now necessary to decide this point, and I may only say that, at present, I am not satisfied that this is the proper construction to be placed on the section."

Order of judge.—Upon the application for an order that satisfaction be entered up, it should be shown that a notice had been served upon the judgment creditor requiring him to have satisfaction entered, and a certificate should be obtained from the clerk showing that satisfaction thereof had not been entered or authorized. It should also be shown that the judgment has been satisfied either by accord and satisfaction or by payment.

257. It shall be lawful for the Judge, upon the application of any party to an action or matter, and upon such terms as may be just, to make any order for the detention, preservation, inspection, surveying, or measuring of any property or thing being the subject of such action or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorize any persons to enter upon or into any land or building in the possession of any party to such action or matter, and for all or any of the purposes aforesaid to authorize any samples to be taken, or any observation, plan, or model

Rule 257 to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

Similar to C.R. 1135, and English C.C.R., 1889, Ord. xii., r. 3, and rule of the Supreme Court, 1883, Ord. l., r. 3.

Any party to an action.—Inspection cannot be obtained under this rule by one defendant against another when no right is in question between them. The application need not, however, in all cases, be by plaintiffs against defendants, or *vice versa*, but it must be by and against parties between whom there is some right to be adjusted in the action: Shaw v. Smith, 18 Q.B.D. 193; *see* also Brown v. Watkins, 16 Q.B.D. 125.

Detention and preservation of property.— Where a defendant alleged that jewelry the subject of the action belonged to a third party, and had been deposited with him as security for a debt, it was ordered to be deposited in court: DeLati v. Braham, 40 L.J.C.P. 415. Where property the subject of the action is being damaged, the plaintiff may be appointed receiver and manager: Hyde v. Warden, 1 Ex. D. 309. Where there is immediate danger of chattels in question in the action being disposed of, then an order may be made appointing a receiver: Taylor v. Eckersley, 2 Ch.D. 302. An order might also be made under this rule commanding a defendant to do an act necessary for the preservation of property in question: Strelley v. Pearson, 15 Ch.D. 113; and where in the event of an appeal by an appellant being successful, success would be useless unless the fund was protected in the meantime, an order was made continuing an injunction pending the appeal: Polini v. Gray, 12 Ch.D. 438.

Inspection of property.—Liberty may be given to the plaintiff to enter on the defendant's land and dig up soil for the purpose of discovering the course of a drain the subject of the action: Lumb v. Beaumont, 27 Ch.D. 356.

Where a defendant refused to accept a shipment of butter and claimed to hold sample tubs as a separate purchase, and refused to give them up, an order was made authorizing the plaintiff and his witnesses to enter upon the defendant's lands and buildings to make observation of them: Munn v. McConnell, 7 C.L.T. 169. Where, however, in an action complaining of a nuisance, proof of the nuisance could be obtained from external sources, an application to inspect the defendant's works to ascertain how the nuisance was occasioned was refused: Barlow v. Bailey, 18 W.R. 783. In Lewis v. Earl of Londesborough, (1893) 2 Q.B. 191, documents in the possession of the opposite party were ordered to be placed in the custody of an officer of the court, and the applicant was given leave to take photographs of them, the photographing to be done in presence of opposite party.

Experiments.—Applications authorizing experiments to be tried have been made chiefly in patent cases which are generally beyond the jurisdiction of the Division Courts: R. v. Co. Ct. Judge of Halifax, (1891) 2 Q.B. 263. *See* vol. 1, p. 71. The court may under the rule employ independent expert evidence to give advice upon which the court may form its judgment: Badische Anilin und Soda Fabrik v. Levinstein, 24 Ch.D. 1156.

Motion, how made.—The motion should generally be made upon notice or summons: Daniels' Ch. Pr., 1802. It may, however, be made *ex parte:* Munn v. McConnell, 7 C.L.T. 169; Hennessy v. Rohman, 36 L.T.N.S. 51.

Costs.—The plaintiff may be ordered to pay the costs of the inspection of defendant's property in any event: Mitchell v. Darley Main Colliery Co., 10 Q.B.D. 457. Rules 257-259

Terms.—The party who obtains possession of any property under an order made pursuant to this rule may be required to enter into an undertaking not to deal with the property except under the direction of the court, and to abide by any order which the court may think fit to make as to damages or otherwise: Taylor v. Eckersley, 2 Ch.D. 302. The order may also include the taking of depositions, etc., as provided by rule 258.

258. Where an order is made for inspecting, surveying, measuring, weighing, making any experiment, or for taking any sample, or making any plan or model, by any person to be named therein, such order may include an order for the Clerk or some other person to be named therein, to examine upon oath and take the deposition of the person so named as to such measure, weight or inspection, or the correctness of such survey, or the result of such experiment, or the fairness of such samples, or the accuracy of such plan or model, and such order may also empower any or either party to give the deposition so taken in evidence upon any trial or proceeding.

Similar to Eng. C.C.R., 1889, Ord. xii., r. 4.

The rule enables an expert employed by the court to make his report without cross-examination at the trial. The depositions should be taken only after notice to both parties and should be signed by the party making it, and filed with the clerk and kept with the papers.

259. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

Similar to C.R. 1131, and Eng. C.C.R., 1889, Ord. xii., r. 1.

Enforcement of order.—An order under this rule for the payment of money, as between debtor and creditor, could not be enforced by attachment: Phosphate Sewage Co. v. Hartmont, 25 W.R. 743; *Ex parte* Hooson, L.R. 8 Ch. 231: Roberts v. Donovan, 21 O.R. 535; Berry v. Donovan, 21 A.R. 14. Other orders under the rule should be enforced by attachment: Hutchinson v. Hartmont, W.N., (1877) 29; Richards v. Cullerne, 7 Q.B.D. 623.

Rule 260

260. So far as applicable the rules and the forms shall extend and apply to provisional counties, provisional judicial districts, territorial districts and temporary judicial districts.

Taken from old rule 165.

Provisional Counties.—By R.S.O., c. 5, s. 1, s-s. 44, the Provisional County of Haliburton continued to be united to and to form part of the County of Victoria. By R.S.O., c. 6, entitled "An Act respecting the Provisional County of Haliburton," the administration of justice in such Provisional County is provided for. The provisions of law as to Division Courts are as follows:

DIVISION COURTS.

General provisions of law to apply.

15. The provisions of law from time to time in force relating to Division Courts in counties and the officers thereof shall apply to the Division Courts of the Provisional County, except where inconsistent with this Act: R.S.O., 1877, c. 6, s. 19; 49 Vict., c. 2, s. 6.

Limits of Division Courts.

16. The Division Courts wholly within the limits of the Provisional County shall continue Division Courts thereof, and territory belonging to a Division Court not wholly within the Provisional County shall continue to belong to such Division Court until a change is made under the next section: R.S.O., 1877, c. 6, s. 20.

Power to alter Divisions of Division Courts.

17. The Lieutenant-Governor in Council may divide the Provisional County into as many Division Court divisions as he may consider requisite, and may number the same consecutively, and may from time to time alter the number, limits, and extent of every division: R.S.O., 1877, c. 6, s. 21.

Times and places for holding Court in each Division.

18. A Court shall, unless the Lieutenant-Governor in Council otherwise directs, be held in every division once in every three months, or oftener, at the discretion of the judge who may appoint, and may from time to time alter the times and places within the divisions, when and at which such Courts shall be holden, subject to the approval of the Lieutenant-Governor in Council: R.S.O., 1877, c. 6, s. 22; 49 Vict., c. 2, s. 7.

Provisional Judicial Districts.—The Provisional Judicial Districts consist of the Districts of Algoma and Thunder Bay: R.S.O., c. 5, s. 1, s-ss. 44 and 45; United Provisional Judicial District of Muskoka and Parry Sound, 57 Vict., c. 13; Provisional Judicial District of Nipissing, 57 Vict., c. 33.

Territorial Districts.—The Territorial Districts consist of the Territorial District of Rainy River: R.S.O., c. 5, s. 1, s-s. 48; but for all judicial purposes not provided for by The Unorganized Territories Act, said district forms part of the Provisional Judicial District of Thunder Bay; and by 55 Vict., c. 83, s. 17, it is enacted that until there shall be a resident judge at Rat Portage for the District of Rainy River, the stipendiary magistrate of the said district for the time being shall have all the powers of a judge of a County Court under the existing (*sic*) municipal laws of the Province of Ontario.

Temporary Judicial Districts.—The Temporary Judicial District of Manitoulin was formed by 51 Vict., c. 14; The Unorganized Territories Act, R.S.O., c. 91, provides for the administration of justice in these districts. The courts of a Provisional Judicial District are presided over by a district judge, who has the same powers, duties, and emoluments as a county

judge: R.S.O., c. 91, s. 52. The courts of Temporary Judicial Districts are presided over by stipendiary magistrates: R.S.O., c. 91, s. 3. The provisions of the statutes relating to Temporary Judicial Districts applicable to the Division Courts are the following: Rule 260

R.S.O., c. 91.—An Act respecting the administration of justice in the Districts of Thunder Bay, Rainy River, Muskoka, Parry Sound, and Nipissing.

> **18.** The Lieutenant-Governor in Council may divide each of the said districts into two or more divisions, and appoint, and from time to time alter the number, limits and extent of every such division, and may number the same consecutively, commencing at number one.

Power to alter is by 52 Vict., c. 12, s. 13, conferred on the District Judge, the Sheriff, and the Division Court Inspector: *see* vol. 1, pp. 10 and 11.

> **19.** (1) A Court shall be held in every such division in Territorial District once in every three months, or oftener, at the discretion of the stipendiary magistrate, who may appoint and from time to time alter the times and places within such division when and at which such Courts shall be holden, subject to the approval of the Lieutenant-Governor in Council.
>
> (2) The Lieutenant-Governor in Council may from time to time make such regulations as he considers expedient in order to secure the due and convenient holding of Courts in the said districts, and within all other districts now or hereafter to be formed in any part of the unorganized territory in Ontario.

See s. 8, vol. 1, p. 5.

The action of the stipendiary magistrate is subject to the approval of the Lieutenant-Governor, wherein his power differs from that of a county judge.

No power similar to that conferred on the Lieutenant-Governor by section 12 of the Act seems to be conferred on him as to Temporary Judicial Districts.

> **20.** (1) The stipendiary magistrate shall act as Division Court judge of the district for which he is appointed, and, besides any additional jurisdiction given to him by this Act, shall have the like jurisdiction and powers as are possessed by the County Court judges in Division Courts in counties, and shall perform the like duties.
>
> (2) The stipendiary magistrate shall be the sole judge in all actions brought in the said Division Courts, and shall determine all questions as well of fact as of law in relation thereto in the summary manner authorized by this Act; but if he thinks fit to have any fact or facts controverted in a cause tried by a jury, a jury of five persons present shall be returned instantly by the clerk of the Court to try such fact or facts, and the stipendiary magistrate may give judgment on the verdict of the jury.

The jurisdiction and powers of County Courty judges will be found fully discussed in vol. 1. One of the powers is the appointment of a deputy: *see* s. 22, p. 19.

There appears to be no right conferred upon suitors to have a case tried by a jury. Whether a case should be so tried depends upon the will of the judge, who, then, has powers similar to those conferred upon Division Court judges under section 168: *see* vol. 1, p. 240.

It is questionable whether there would be power to try an interpleader issue by a jury, as that is not a case, but a "proceeding in a cause":

Rule 260 Cameron v. Allen, 10 P.R. 192; *Re* Turner v. Imperial Bank of Canada, 9 P.R. 19. Sub-section 2 seems, therefore, to restrict rather than to extend sub-section 1.

21. (1) The provisions of law from time to time in force relating to Division Courts in counties, and the officers thereof, including the rules or forms made or to be made by the Board of County Judges, and the fees payable to the clerks and bailiffs, shall apply to the Division Courts of the said districts, except where inconsistent with this Act.

(2) Sections 150, 154, 158, and 170 of The Division Courts Act shall not apply to the Division Courts of the said districts.

Inconsistencies.—The following seem to be inconsistencies:—

(1) Trial by jury in interpleader does not seem to be allowable: *see* notes to section 20.

(2) The appointment of an agent for service in case of appeal is not necessary in a judicial district, inasmuch as section 150 does not apply: *see* vol. 1, p. 227. By section 32, however, it is provided that personal service may either be effected, or all papers requiring service may be delivered to the clerk of the Division Court, who shall mail the same to the person entitled or his authorized agent.

(3) The right of parties to a jury under section 154 of The Division Courts Act is taken away. It is questionable whether section 155, which remains applicable, gives the right to a jury in interpleader matters. It is submitted that, in view of section 20, it does not.

(4) Section 158, which provides for the selection of jurors, is not applicable: *see* vol. 1, p. 235.

(5) Fees for jury fund are not to be collected in Temporary Judicial Districts: *see* s. 170, vol. 1, p. 242.

22. (1) The judge or junior judge of the County Court of the County of Simcoe may, if he thinks fit, at the request of the stipendiary magistrate of the district, hold any Division Court in the District of Muskoka, or in the District of Parry Sound; and the stipendiary magistrate of either such districts may, if he thinks fit, at the request of the judge or junior judge of the said County of Simcoe, hold any Division Court in such county.

(2) Every judge or stipendiary magistrate, while holding any such Court, shall have all the rights, powers, and privileges of the officer at whose request he is holding Court.

23. The Division Courts of the said districts shall not have cognizance of any action for any gambling debt, or for any spirituous, malt, or other like liquors, nor of any action whether brought by the payee or any other person on a note of hand, the consideration or any part of the consideration of which was for a gambling debt or for such liquors; nor for any action for the recovery of land, or any action in which the title to any corporeal or incorporeal hereditaments, or to any toll, custom, or franchise is in question, or in which the validity of any devise, bequest, or limitation under any will or settlement is disputed; nor of any action for malicious prosecution, or for libel or slander, or for criminal conversation or seduction, or breach of promise of marriage.

In actions brought in the Division Court for the Temporary Judicial Districts for spirituous, malt, and *other like liquors*, the jurisdiction is ousted, whether the liquors were drunk in a tavern or ale-house, or not. It is expressly provided that, upon a note of hand given for a gambling debt or for

such liquors, the jurisdiction is ousted, *whether the action is brought by the payee or any other person.* The words "right or" are omitted before the word "title" in dealing with jurisdiction in actions relating to corporeal or incorporeal hereditaments. The clause ousting the jurisdiction in actions against a justice of peace where he objects thereto is omitted. With these exceptions, section 23 is similar to section 69 of The Division Courts Act: *see* vol. 1, pp. 53-57. The effect of the prohibition in reference to liquors would be to compel a wholesale grocer who held a note for $90, of which $10 was for liquors, to sue in a higher court. Rule 260

24. The said Division Courts, in addition to the jurisdiction given to the Division Courts under The Division Courts Act, shall have jurisdiction in all personal actions where the amount claimed does not exceed $100, and the stipendiary magistrate shall hear and determine such actions and matters in relation thereto in a summary way, and make such orders and judgments as appear to him just and agreeable to equity and good conscience.

This is important. Where a defendant resides or carries on business, or the cause of the action arose in a Temporary Judicial District, the plaintiff would be subject to the rules as to scale and set-off of costs in the event of recovering between $60 and $100 in a personal action. A personal action is defined in vol. 1, p. 75: *see* Whidden v. Jackson, 18 A.R. 440.

Agreeable to equity and good conscience.—*See* section 70, vol. 1, pp. 73 and 78.

25. Any executor or administrator may sue and be sued in any such Division Court, in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like cases would be given or issued in the High Court; and any one under the age of twenty-one years may prosecute an action in any such Court for any sum of money not exceeding $100, due to him for wages or piece work, or for work as a servant, in the same manner as if he were of full age.

Minors may sue for wages.—*See* vol. 1, p. 99.

26. With the consent of both parties to the action, the stipendiary magistrate may try any action within the jurisdiction against a Division Court clerk of his district in any Division Court within the district.

This would give the right to sue a clerk in his own Division Court. The consent need not be in writing: *see* vol. 1, p. 125. There must first be a case in the Division Court within its jurisdiction.

28. (1) The stipendiary magistrate holding any Division Court as aforesaid, may, in any case, with the consent in writing of both parties to the action, order the same, with or without other matters in dispute between the parties and within the jurisdiction of the Court as to subject-matter but irrespective of amount if not exceeding $800, to be referred to arbitration to such person, and in such manner and on such terms as he may think reasonable and just: and such reference shall not be revocable by either party, except by consent of the stipendiary magistrate; and the award of the arbitrator or arbitrators or umpire, shall be entered in the cause as a judgment of the Court, and shall be binding and effectual, to all intents and purposes.

(2) Where a reference has been made by such order, either of the parties to the action may obtain from the clerk of any Division Court, and cause to be duly served a summons or subpœna requiring

Rule 260

the attendance before the said arbitrators, of any witness resident within the district, in like manner as before the stipendiary magistrate at the sittings of the said Division Court.

29. The stipendiary magistrate may, on application to him within fourteen days after the entry of the award, set the same aside, or may, with the consent in writing of both parties revoke the said reference and order another reference to be made in the manner aforesaid.

30. (1) If the parties between whom differences have arisen agree by a writing signed by them to refer their causes of action, claims and demands to the stipendiary magistrate and agree that the stipendiary magistrate may try and determine the same, the said stipendiary magistrate shall have power and jurisdiction so to do, provided the subject-matter of difference is upon a cause or causes of action not exceeding $800 in amount, and not within the subjects excepted from the jurisdiction of the said Division Courts.

(2) Every such agreement shall be executed in duplicate, one of which duplicates shall be filed with the said stipendiary magistrate and the other with the clerk of the Division Court and the Court shall thereupon have jurisdiction in respect of the matter so referred.

(3) Upon such agreement being filed the plaintiff may enter his claim for suit in such Division Court, and sue out a summons thereupon as in ordinary cases, and the proceedings in the said action may be conducted to judgment and execution (irrespective of the amount recovered, provided it does not exceed $800) in the same manner as in other actions in the said Court, and the judgment in such action shall have the same effect as any other judgment of the Court.

31. From the judgment of a stipendiary magistrate pronounced in a case tried under the preceding two sections an appeal shall lie to the Court of Appeal subject to such rules as to security, stay of proceedings, and otherwise, as the said Court may make in respect thereto, and subject until all such rules are made, to the like rules, and statutory restrictions as are applicable to appeals from the decision of a judge of a County Court; but the entry of judgment shall not prevent the appeal being had or proceeded with.

32. Upon an application for a new trial in a cause wherein either party may appeal, personal service may be effected, or all papers requiring service may be delivered to the clerk of the Division Court where the action was tried, or left at his office for the person entitled thereto. The clerk shall forthwith mail by registered letter all such papers to the person entitled to the same, or his authorized agent.

33. On the application of the party proposing to appeal his counsel, solicitor, or agent, the stipendiary magistrate shall stay the proceedings in the cause for a time not exceeding twenty days, from the day of giving judgment on the application for a new trial, in order to afford time to give the security required for the appeal.

34. No appeal shall lie to the Court of Appeal if, before the court opens, or if (without the intervention of the stipendiary magistrate), before the commencement of the trial, there shall be filed with the clerk an agreement in writing not to appeal, signed by both parties, or by their solicitors or agents. The stipendiary magistrate shall note in his minutes whether such agreement was filed or not, and the minutes shall be evidence upon that point.

82. No damages shall be recovered in respect of injuries committed in any of the said districts upon any land by horses, cattle, sheep or swine, straying upon such land, unless the animal so straying was running at large contrary to a municipal by-law in that behalf; and where no by-law, prohibiting or regulating the running at large of the class of animals to which the animal trespassing belongs, is in force in the municipality, township, or place, then no such damages shall be recovered unless such animal has broken through or jumped over a fence then being in reasonably good order and of the height of four and one-half feet; but this section shall not apply to unruly or breachy animals.

261. Regular meetings of the board, when necessary, may be held upon the call of the chairman, or of any two members of the board, and at the City of Toronto.

Old rule 166 provided that the regular meetings should be held on the third Monday in June annually. It is not intended that the board shall hereafter meet at any stated times or periods. Meetings are to be held at any time.

Affidavits and Oaths.

262. Every affidavit, and other proceeding of the like nature, shall be divided into numbered paragraphs, and shall state concisely such matters and facts as may be necessary to truly inform the Court.

Form of affidavit.—The affidavit must contain the words "make oath"; for, although the jurat certifies that deponent was sworn, it will not be sufficient, unless the affidavit states that he makes oath: Allen v. Taylor, 10 Ex. 52. Where a statutory declaration is admissible, the words are "do solemnly declare."

Numbered paragraphs.—The paragraphs should be numbered consecutively, commencing at 1.

Matters and facts.—The sources of knowledge or belief must be stated: rule 262.

Before whom sworn.—Affidavits made in the Province of Ontario may be sworn before a judge of a Division Court; a clerk or deputy-clerk of a Division Court; a judge of the High Court; a notary public, or a commissioner for taking affidavits in the High Court: *see* section 143, vol. 1, pp. 207 and 208. If made out of the province, they may be sworn before any of the persons enumerated in R.S.O., c. 61, p. 34.

Formal requirements.—For other formal requirements, *see* vol. 1, pp. 119 and 207, rules 263 and 268.

263. Every affidavit shall be drawn up in the first person, stating the name of the deponent at the commencement in full, and his description and true place of abode,

Rule 263 and shall be signed by him, and in any proceeding in the Court must be entitled in the Court and cause (if a cause has been commenced) stating the names in full of the parties as in the summons.

First person.—An affidavit sworn in the United States, though expressed in the third person, was received: *Re* Husband, 12 L.T. 403.

Name in full.—An affidavit giving only the initial of deponent's second christian name is regular: De Forrest v. Bunnell, 15 U.C.R. 370.

Description.—The description of a person is that which tells what he is, and where a statute required the name, place of abode, and description of a person to be given, and only the name and place of abode were given, it was held to be a total omission of the description and not an inaccurate description: R. v. Tugwell, L.R. 3 Q.B. 704. "Gentleman" is not a proper description of a deponent who has any office or occupation: Allen v. Thompson, 1 H. & N. 15; Adams v. Graham, 33 L.J.Q.B. 71; *Ex parte* Hooman, L.R. 10 Eq. 63; Broderick v. Scalé, L.R. 6 C.P. 98; but is of a person who never had an occupation: Gray v. Jones, 14 C.B.N.S. 743; or who is out of employment: Morewood v. South Yorkshire Railway Co., 3 H. & N. 798; Smith v. Cheese, 1 C.P.D. 60. A solicitor's clerk is not properly described as "gentleman": Beales v. Tennant, 29 L.J.Q.B. 188, even though he had previously been a solicitor: Tuton v. Sanoner, 3 H. & N. 280. A deponent who has lately been a contractor and financial agent may be properly so described, though not then actively engaged in such business: Sharp v. Brown, 38 Ch.D. 427. A shipbroker may be described as "broker": Gujen v. Sampson, 4 F. & F. 974; but a stockbroker should not be described as stock exchange broker: *Re* Levy, 60 L.T.N.S. 317. A clerk in the Admiralty was held to be properly described as a "government clerk": Grant v. Shaw, L.R. 7 Q.B. 700. A schoolmaster is not properly described as "tutor": Lee v. Turner, 20 Q.B.D. 773. A clerk to an accountant who sometimes did accountant's business on his own account was sufficiently described as accountant: Briggs v. Boss, L.R. 3 Q.B. 268; but a clerk in the accountant's department of a railway company would not be truly described as accountant: Larchin v. North-Western Deposit Bank, L.R. 10 Ex. 64.

True place of abode.—The place of abode should be that of the time of making the affidavit: Button v. O'Neill, 4 C.P.D. 354. The place of business of the deponent or of his employer, if he be a clerk, is sufficient: Attenborough v. Thompson, 2 H. & N. 559; Blackwell v. England, 8 E. & B. 541; Simmons v. Woodward, (1892) A.C. 100.

Signed by him.—An affidavit sworn in a foreign country not signed by the defendant, but signed by the official before whom it was sworn, may be received: *Re* Howard, *Re* Ashcroft, L.R. 9 C.P. 347; but if the signature of the official before whom sworn was omitted, it would be rejected: Nisbet v. Cock, 4 A.R. 200.

Entitled in court and cause.—If an action has been commenced, the court and style of cause must be placed at the head of every affidavit intended to prove any fact therein. In a contemplated action, it is proper to entitle an affidavit, "In the matter of a contemplated action": Young v. Brassey, 1 Ch.D. 277. If there is a cause in court and the affidavit is not entitled therein, it is bad, because no perjury can be assigned on it: *Re* Burrowes, 18 C.P. 502.

264. In every affidavit, made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents be taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the above-named deponents.

Identical with C.R. 606.

The following form may be used: "The above named deponents A.B. and C.D. were severally sworn at Paris, in the County of Brant, this day of 189 , before me. A Commissioner, etc."

265. All affidavits, other than those for which forms are given, shall state the deponent's sources of knowledge or what facts or circumstances deposed to are within the deponent's own knowledge, and his means of knowledge, and what facts or circumstances deposed to are believed by him, by reason of information derived from other sources than his own knowledge, and what such sources are.

Taken from English C.C.R., 1889, Ord. xix., r. 2 (*a*).

Forms are given.—The forms referred to are the authorized forms numbered from 1 to 253.

Sources of knowledge.—An affidavit by a managing clerk of a solicitor is insufficient unless it states that he has some particular charge of the suit: Elmsley v. Cosgrave, 6 P.R. 164.

Deponent's own knowledge.—If the sources of knowledge are not stated, it is necessary to distinguish in the affidavit between facts within the deponent's knowledge and facts believed by him, and in the one case to set forth his means of knowledge, and in the other his sources of information. C.R. 609 allows statements as to belief to be used only on interlocutory motions, when the grounds of belief must be set forth: Bidder v. Bridges, 26 Ch.D. 1.

266. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer: no such affidavit shall be used in evidence or

Rules 266-269

read in the absence of this certificate, unless the Judge is satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

Identical with C.R. 612, and rules of Supreme Court, 1883, Ord. xxxviii., r. 13.

An affidavit which did not appear to have been read over to an illiterate deponent was ordered to be taken off the files: *Re* Langstaffe, 54 L.J. Ch. 516.

For form of jurat, see form 41 (*n*).

267. For ordinary affidavits in a cause, the general heading and conclusion, given in Form No. 22, should be used, except where another form is provided.

This rule is new. Form 44 is the general form to be used in garnishee proceedings.

See, as to several deponents, rule 264; and as to illiterate or blind deponents, rule 266.

268. No affidavit having in the jurat or body thereof any interlineation, alteration or erasure, shall, without leave of the Judge, be read or made use of, in any matter pending in the Court.

See C.R. 611.

In practice, compliance with this rule will be found very irksome. The rules in force in the High Court and the County Court allow an alteration, interlineation, or erasure, even in the jurat, to be initialled by the officer taking the affidavit. In no other court has such a stringent rule as the present been enacted.

Without leave of the judge.—Leave will probably be given in all cases where the alteration or interlineation is initialled by the officer taking the affidavit, and where the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten in the margin and signed or initialled by such officer. A clerk or bailiff would have no authority to accept an affidavit having an alteration, interlineation, or erasure therein, though initialled, and any process issued thereon would be irregular. Before being used, all such affidavits should be taken to the judge, who may endorse thereon, "Leave is hereby given to read and make use of the within affidavit, notwithstanding the interlineation, alteration (or erasure) therein." Old rule 133 provided that the judge should not be bound to reject as insufficient any affidavit not complying with requisites similar to those prescribed in rules 262-268, but this provision is now repealed.

269. Oaths and affirmations administered to witnesses in open Court or upon any *viva voce* examination before the Judge, and to jurors and others may be in the forms prescribed. (See Form 41.)

Identical with old rule 134.

Married Women.

Rules 270-271

270. Married women are capable of suing and being sued in the Division Courts, as provided in *The Married Women's Property Act* (R.S.O., cap. 132).

R.S.O., c. 132, s. 3, s-s. 2. A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceedings brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

S-s. 3. Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary is shown.

S-s. 4. Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire.

Declaratory of the law.—This rule is merely declaratory of the law. *See* the cases on the construction of the foregoing sections, vol. 1, p. 394, "Right to sue and be sued."

271. In every suit against a married woman, founded on a contract made by her during marriage, there shall be inserted in the particulars of claim words to the effect following: "The defendant, A.B., is a married woman, and had separate property when she contracted the liability in question, and contracted with respect to such separate property."

Shall allege separate estate.—The editors suggested in vol. 1, p. 395, an allegation substantially identical with that required by the rule.

Contracted with reference thereto.—The onus is on the plaintiff to prove the possession of separate property at the time of contracting the liability. When that fact is proven, it will be presumed that the defendant contracted with respect to such separate property, "unless the contrary be shown." *See* vol. 1, pp. 395, 396. Although a married woman may have had no separate estate at the time of contracting the liability, yet if she afterwards exercise a general power of appointment the property appointed will be taken to satisfy such liability under R.S.O., c. 132, s. 6: *Re* Ann, Wilson v. Ann, (1894) 1 Ch. 549.

By the English Married Women's Property Act, 1893 (not yet (1894) re-enacted in Ontario), it is enacted that: (1) Every contract hereafter entered into by a married woman, otherwise than as agent, (*a*) shall be deemed to be a contract entered into by her with respect to and to bind her separate property, whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract; (*b*) shall bind all separate property which she may at that time or thereafter be possessed of or

Rules 271-274

entitled to; and (*c*) shall also be enforceable by process of law against all property which she may thereafter, while discovert, be possessed of or entitled to; provided that nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract any separate property which at that time or thereafter she is restrained from anticipating.

272. If the summons be a special summons, properly endorsed, and the defendant does not dispute the claim or deny the allegation with respect to the separate estate, the Clerk may sign final judgment, pursuant to section 109 of the Act.

This rule adopts the law as laid down in Tetley v. Griffith, 57 L.T.N.S. 673; Holtby v. Hodgson, 24 Q.B.D. 103, at p. 105: *see* vol. 1, p. 395.

273. All judgments against a married woman, in respect of liabilites incurred, whether for costs or otherwise, during marriage, shall be in the following form or to the like effect: "It is adjudged that the plaintiff (or defendant) do recover $ and costs against the defendant (or plaintiff), such sum and costs to be payable out of her separate property, as hereinafter mentioned, and not otherwise; and it is ordered that execution hereon be limited to the separate property of the defendant (or plaintiff), A.B., not subject to any restriction against anticipation, unless, by reason of *The Married Women's Property Act*, the property shall be liable to execution notwithstanding such restriction."

Form of judgment.—The form given is substantially that settled by the Court of Appeal in Scott v. Morley, 20 Q.B.D. 120: *see* vol. 1., p. 401.

274. Where a judgment is recovered against a married woman in respect of a debt contracted by her before marriage, the judgment may be in the form following: "It is adjudged that the plaintiff do recover the sum of $ and costs against the defendant, A.B., such sum and costs to be payable out of her separate property, whether subject to any restriction against anticipation or not, and not otherwise."

The form of judgment here provided is in accordance with R.S.O., c. 132, s. 20: *see* vol. 1, p. 401.

Trials and Hearings.

Rules 275-277

275. In cases where the hearing is by jury the Judge has the same power to non-suit as in ordinary cases.

Identical with old rule 122.

As in ordinary cases.—In ordinary cases, "in case satisfactory proof is not given to the judge entitling either party to judgment, he may non-suit the plaintiff": section 114; *see* vol. 1, pp. 163, 215, 240. Giving a literal construction to these words, the judge may possess a larger power to non-suit than the judges of other tribunals. It is submitted, however, that the judge should not non-suit unless there is no evidence upon which twelve reasonable men might find a verdict for the plaintiff: Ryder v. Wombwell, L.R. 4 Ex. 32, 39; Giblin v. McMullen, L.R. 2 P.C. 317; Steward v. Young, L.R. 5 C.P. 122-128; Daniel v. Metropolitan Ry. Co., L.R. 5 H.L. 45; Jackson v. Metropolitan Ry. Co., 3 App. Cas. 193; Avery v. Bowden, 6 E. & B. 953, 974; Moore v. Connecticut Mutual Life Ins. Co. of Hartford, 6. S.C.R. 644.

As to the distinction between cases tried by a judge and cases tried by a jury, *see* Morrow v. Canadian Pacific Ry. Co., 21 A.R. 149; Taylor v. Smith, (1893) 2 Q.B. 65.

276. It is determined and ordered that the trial of a cause shall not be considered to have been concluded, in case the giving of judgment has been postponed by the Judge to a subsequent day, until the delivery thereof in writing at the Clerk's office upon the day and at the hour named therefor by the Judge, or orally by Judge at some sitting of the Court.

This is a new rule. The object is to prevent a judge from becoming *functus officio* until judgment is delivered, although not pronounced at the trial, and although no day has been fixed for its delivery: *see* rule 161 and notes thereto, and judgment of Osler, J.A., in Forbes v. Michigan Central Ry. Co., 20 A.R. 589.

By 57 Vict., c. 23, s. 4, a judge is authorized to postpone judgment until it is convenient for him to give the same: *see infra.*

Leave to Dispute Plaintiff's Claim.

277. The leave to dispute the claim of the plaintiff in any action, before judgment, under section 112 of the Act, may be obtained on the *ex parte* application of the defendant, or his solicitor, on sufficient grounds being shown by affidavit.

This rule is new.

Rules 277-279

Ex parte application.—The application must be made before the judgment is actually entered.

On sufficient grounds shown.—*See* vol. 1, p. 161, and rule 121. The delay should be explained and the grounds of defence disclosed by affidavit.

Notice to plaintiff.—By rule 167, the clerk must send notice to the plaintiff of the granting of the leave, specifying at what sittings the case will be tried. Form 198.

Notice disputing claim must be entered.—By section 112, notice disputing the claim shall immediately, on the leave being granted, be left with the clerk, and a copy sent to the plaintiff by prepaid letter through the post or otherwise. The notice may be addressed as required by rule 241, and should be registered. Rules 169 and 300.

Action Pending in Another Court for Same Cause.

278. Where, at the trial, it shall appear that an action for the same cause at the suit of the same plaintiff is pending in any other Court, the Judge may order the trial to stand adjourned to a certain day, and unless before such day the action in such other Court shall have been discontinued, the action may be dismissed or stayed as the Judge shall determine.

This rule is new, and is taken from Eng. C.C.R., 1889, Ord. xxii , r. 9. *See* also R.S.O., c. 44, s. 52, s-s. 10.

Lis alibi pendens.—Where a plaintiff sues a defendant for the same matter in two courts in this province, such a proceeding is *prima facie* vexatious, and the court will generally, as of course, put the plaintiff to his election and stay one of the suits: McIlenry v. Lewis, 22 Ch.D 397; but where one of the actions is in a foreign court, the onus of showing that the double proceeding is vexatious is on the defendant: *ib.*, Peruvian Guano Co. v. Bocknoldt, 23 Ch.D. 225; Hyman v. Helm, 24 Ch.D. 531; Mutrie v. Binney, 35 Ch.D. 614; Hughes v. Rees, 3 C.L.T. 213; Direct U.S. Co. v. Dominion Telegraph Co., 8 A.R. 416. If the plaintiff has not so good a remedy in the foreign country as in this province, he will not be put to his election: The Christiansborg, 10 P.D. 141; but pending an appeal in a foreign country, a stay may be ordered: Huntingdon v. Attrill, 12 P.R. 36; and where the foreign court is most convenient, a stay will be ordered: Howell v. Jerrett, 7 P.R. 69.

To a certain day.—The judge cannot, on this ground, in the first instance, dismiss the action or order a stay. He must first adjourn to a certain day.

Inspection of Property by Judge.

279. The Judge by whom any action or matter may be tried may, in his discretion, inspect, or order the jury to inspect, any property or thing concerning which any question may arise therein.

Identical with Eng. C.C.R., 1889, Ord. xxii., r. 13. Compare C.R. 701.

Adjournment of Suit.

280. Where a cause is adjourned, no order of adjournment shall be served on either party, except by direction of the Judge.

Identical with old rule 139.

By rule 286 all parties must be notified by the clerk of the adjournment when neither has appeared at the trial.

Putting off Trial.

281. Either party to an action or matter may, at any time before the hearing, and upon notice to the opposite party, apply to the Judge, in writing, for an order to put off the trial on account of the absence of a material witness (whose name should be stated), or other sufficient grounds, to be disclosed on affidavit, and the Judge, in granting or refusing the application, may impose such terms as to the payment of costs and otherwise as he thinks fit.

Substantially similar to old rule 141.

Postponing trial.—Where the defendant swore that he was a necessary and material witness on his own behalf, and that it would be unsafe in his state of health to travel from Ottawa to Winnipeg, it was held that the trial should not have been proceeded with in his absence: Schultz v. Wood, 6 S.C.R. 585; but the party applying must show due diligence, or the application may be refused: Steuart v. Gladstone, 7 Ch.D. 394; or he may be ordered to pay the costs of it: McDonald v. McMillan, 22 Gr. 362; but where due diligence has been used, the costs will be made costs in the cause: Brown v. Porter, Knox v. Porter, 11 P.R. 250.

Other terms.—Where the defendants applied to postpone the trial, and their defence was of a doubtful character, and they might have examined a witness who was ill *de bene esse*, the court refused the postponement, except on condition that $1200 be paid into court: Bank of Hamilton v. Stark, 13 P.R. 213.

Abandoning order.—Where an order was made for postponement of a trial on payment of costs, it was held that the defendant was at liberty to abandon it without being liable for other than the costs of the application: Allen v. Mathers, 9 P.R. 477.

282. When a plaintiff avails himself of the provisions of section 106 of the Act, and proceeds against only one or more of the several persons jointly liable, the defendant sued may avail himself of any set-off, counterclaim or other defence to which he would be entitled, if all the persons liable were made defendants.

Rules 282-283 Identical with old rule 151.

The plaintiff cannot, by suing only one of several persons jointly liable, prevent a set-off, counterclaim, or other defence which all or some would have had from being set up: Stackwood v. Dunn, 3 Q.B. 822; *see* Toplis v. Grane, 5 Bing. N.C. 636.

New Trial.

283. Application for new trial may be made *viva voce*, and determined on the day of hearing, if both parties be present; but if made when both parties are not present, it shall be in writing, and show briefly the grounds on which it is made, which grounds, if matters of fact requiring proof, shall be supported by affidavit.

(*a*) A copy of the application and of every such affidavit, shall be served by the party making the same on the opposite party or his solicitor or agent, or left at his usual place of business, if within the division; or if without the division, then with the Clerk, who shall, on receiving the fees and necessary postage, transmit the same forthwith to the opposite party.

(*b*) The application and affidavits (if any), together with an affidavit of the service thereof, on the Clerk or the opposite party (as the case may be), shall be delivered to the Clerk, within fourteen days after the day of trial, to be by him, on receiving the fees and necessary postage, transmitted to the Judge, with a copy of the original claim, and other papers requisite to the proper understanding of the case, in manner hereafter stated, which delivery to the Clerk shall operate as a stay of proceedings until the Judge's final decision on the application is communicated to the Clerk, unless the Judge shall otherwise order.

(*c*) The Clerk, after receiving such papers, shall delay for six days forwarding the same to the Judge, to enable the opposite party to answer the same in writing or by affidavit, if facts stated by the applicant in his affidavit are disputed, at the end of which period, the Clerk shall transmit the whole of the papers to the Judge for his consideration. If the application be refused, or if the party applying shall fail to comply with the terms imposed by the Judge, the proceedings in the suit shall be continued, as if no such application had been made. The Judge before deciding the same, may hear the parties on the matter of such application at the next sitting of the Court, or at such other time or place as he may appoint. The decision of the Judge shall be delivered to the Clerk, or transmitted to him by mail, and such Clerk shall notify the parties thereof, by mail, or otherwise, and if a new trial be granted, the suit shall be tried at the next sitting of the Court, unless the Judge shall otherwise order. Rule 283

(*d*) If the application be refused, or if the party applying shall fail to comply with the terms imposed by the Judge, the proceedings in the suit shall be continued as if no such application had been made.

(*e*) The Judge may, in his discretion, make it a condition of granting a new trial, that it shall take place before a jury, whether the first trial took place before a jury or not; but if either party required a jury to try the case, in the first instance, he shall be entitled to another jury, on depositing the necessary fees

Rule 283

for summoning such jury; and in such case, the order for the new trial shall direct the summoning of a jury.

(*f*) Where, under the 144th section of the Act, judgment in writing is delivered at the Clerk's office, application for a new trial may be made within fourteen days from the day of delivering such judgment.

This rule is taken from old rule 142, and is in many respects similar thereto.

May be made viva voce.—It is only when the application is made on the day of hearing and both parties are present that an application for new trial (not in writing) can be entertained.

Grounds for.—A new trial may be granted on good grounds being shown: *see* section 145, vol. 1, p. 211. As to what are good grounds, *see* vol. 1, pp. 213 and 214. The grounds must be set forth in the written application, and if facts are relied upon which do not appear from the papers, or were not shown in the evidence at the trial, such facts should be set forth shortly in the application and supported by affidavit. The granting of a new trial without an affidavit would not be ground for prohibition: *Re* Fee v. McIlhargey, 9. P.R. 329.

Service of application.—Every affidavit used must be served on the opposite party, or left at his usual place of business, if within the division. Rule 241 does not, in terms, extend to the service of such papers; and if the party has no solicitor or agent, or no usual place of business within the division, the papers should be left with the clerk.

On receiving the fees.—Old rule 142 did not impose on the party the necessity of paying the fees for transmitting the application by the clerk to the opposite party.

Affidavit of service.—The words "on the clerk or the opposite party (as the case may be)," in clause (*b*), did not occur in the old rule. If service is made by delivering the application and affidavits to the clerk, there must nevertheless be an affidavit of service made before the application and the original papers are delivered to him to be forwarded to the judge.

Within fourteen days.—A new trial cannot be granted unless applied for within fourteen days from the day of the trial: *see* vol. 1, p. 212. If judgment has been postponed, the application may, under clause (*f*), be made within fourteen days from delivering the judgment.

Stay of proceedings.—Formerly, the application for new trial operated in all cases as a stay of proceedings which there was no power to remove until the application was disposed of. The words "unless the judge shall otherwise order" at the conclusion of clause (*b*) are now inserted, and confer upon the judge a discretion to remove the stay.

Shall delay for six days.—Under old rule 142, the application for new trial was immediately forwarded to the judge, who was required to delay for six days before deciding upon the application. The clerk is now to retain the papers for that length of time; or, perhaps, if the application is answered within the six days, until the answer is received, before forwarding the same to the judge.

The whole of the papers.—All the papers in the suit should be forwarded to the judge, so that they may all be before him on the consideration of the application. Through some oversight in framing the rule, clause (*d*) has been inserted also as part of clause (*c*).

Judge may hear parties.—It is the practice in many courts for the judge to require an appointment to be taken out for the argument of the application. The party in whose favor the judgment has been given should apply immediately after replying to the application for an appointment, if he desires the application to be disposed of speedily.

Shall be delivered to the clerk.—These words in clause (*c*) are new. Formerly, the judge was *required* to transmit his decision to the clerk by mail.

Shall notify the parties.—Under the old rule the clerk was required to notify the parties only when a new trial was ordered.

Fees for summoning such jury.—It is questionable whether the expense of a jury on a new trial are taxable against the opposite party. Formerly, the law was that the expense of a jury could not be taxed against the opposite party: *Re* Lewis v. Old, 17 O.R. 615. By an amendment to section 156 of the Act made by 57 Vict., c. 23, s. 6, it is now provided that the party requiring a jury shall, on giving notice thereof, deposit with the clerk, "*towards costs in the cause*," the proper fees for the expenses of summoning such jury. The words of the rule are similar to those which were used in section 156 before the amendment, and possibly will receive the same construction as in the case cited.

284. If upon an application for a new trial, the Judge, instead of granting a new trial, pronounces the judgment which in his opinion ought to have been pronounced at trial, the fact shall be noted in the procedure book, and the order for judgment shall be transmitted to the Clerk.

Judgment which ought to have been pronounced.—*See* section 146, vol. 1, pp. 214, 215.

Order for judgment.—The form of order for judgment under section 146 and this rule is form 179: *see* also form 91.

285. It is considered and ordered (lest there be a conflict of decision or diversity of action in the exercise of the discretion with which the Judge is invested under section 146) that upon an application for a new trial, the Judge, instead of granting a new trial, may pronounce the judgment which, in his opinion, ought to have been pronounced by the Judge who tried the case, without a jury, and that in that case, only, may he order judgment to be entered accordingly; but that he has no such discretion or authority in dealing with an application for a new trial and setting aside a verdict of a jury. This

Rules 285-287

rule shall not be construed to prevent a Judge upon an application for a new trial in a jury case, from ordering that a non-suit be entered, in case he shall be of opinion that he ought to have entered judgment of non-suit at the trial.

This rule adopts the opinion of the editors as expressed in vol. 1, p. 215. In cases tried by a jury the judge has only three courses open to him, namely:—(1) To dismiss the application; (2) to enter a non-suit; or (3) to direct a new trial. The verdict of the jury cannot be altered.

Notice to Parties of Adjournment of Case.

286. In case neither of the parties appear at the trial, the Judge may either strike out the case or postpone the trial. In case of postponement, the Clerk shall notify all parties by postal card of the adjournment and of the date of the sitting to which it has been adjourned.

Under rule 280, no order of adjournment is to be served on either party except by the direction of the judge.

Inspection of Documents.

287. When, in any action or matter, any party thereto is desirous of inspecting any document in which he has an interest, and which shall be in the possession, power, or control of any other party, he may, within four days from the day of the service of the summons, give notice to such other party, by prepaid and registered post letter, or otherwise, that he desires to inspect such instrument, at any place to be appointed by such other party, and being within the division in which the suit is brought, and such other party shall appoint a place accordingly; but if he neglects or refuses to appoint such place, or to allow the party giving the notice, or his solicitor or agent, to inspect it within three days from the day of receiving such notice, the Judge may, in his discretion, on the day of hearing, exclude such document from being given in evidence in such action or matter, or adjourn the cause for the purpose of such inspection, and make such order as to costs as he shall think fit.

This rule is taken from old rule 137, which, however, provided only for the inspection by the defendant of any deed, bond, or other instrument or writing which was in the possession, power, or control of the plaintiff. This rule extends to all documents, and gives to the plaintiff a right to inspect any document in the possession, power, or control of the opposite party. Rule 287

Within four days.—It is difficult to see why the time for giving notice of the desire to inspect should be limited to four days from the service of the summons. No power is given to extend the time, and, unless notice is given within four days, neither party can obtain inspection under this rule. Under rule 257, an order may be made for the inspection of any property or thing being "the subject of the action or matter." The day of service of the summons would be excluded in the computation of the four days.

Give Notice.—Notice may be given in the manner prescribed by rule 241. If the defendant have not filed any notice of defence, and the plaintiff desires to inspect any documents in his possession, the plaintiff would, it is submitted, send the notice by letter at his peril of directing the same to the proper address. If there should be any doubt about the address, the only safe way would be to serve it personally. If given by letter, the service would count from the mailing, if within the four days.

Inspection of documents.—The party required to produce the documents for inspection must, within three days *from the date of receiving the notice*, appoint a place within the division in which the suit is brought for the inspection. If the notice were not received, there would be no power to give a new notice after the expiration of the four days, or to exclude the document from being given in evidence. If a place should be appointed, it would seem that the document would have to be left at such place for an indefinite time, to allow the party giving the notice to inspect the same. It would have been more convenient to have provided, as in C.R. 516, that the notice appointing the place should also name a time at which the document might be inspected.

Exclude all documents.—No power is given to the judge to order the production of the document for inspection in the event of no place being appointed, unless the document should fall within rule 257. Such a power is conferred in the High Court under C.R. 517 and 518. Should such a document be necessary for the proof of the case of either party, the production thereof could be enforced only by subpœna to produce it at the trial.

Privilege.—Certain documents are privileged from production for inspection by the opposite party, and it is submitted that such documents do not fall within the above rule. Without making any attempt at being exhaustive, the following examples may be referred to:—

(1) Communications between solicitor and client. "The law as to privileged communications between solicitor and client is very clearly expressed in Gardner v. Irvin, 4 Ex.D. 49: 'It is not sufficient for the parties to say that the letters are correspondence between a client and the solicitor. The letters must be professional communications of a confidential character for the purpose of getting legal advice.' Letters are not necessarily privileged because they pass between solicitor and client. In order to be privileged there must be a professional element in the correspondence": *per* Lindley, L.J., O'Shea v. Wood, (1891) P. 286, at p. 289. Letters written by a clerk to the client containing references to advice given by the client's solicitors, whom the clerk has consulted, are privileged: Boughton v. Citizens' Ins. Co., 11 P.R. 110. Should the solicitors, unknown to the client, have ceased to practise as such when the communications are made, they will nevertheless be privileged: Colley v. Richards, 19 Beav. 401. Information procured by the client or by the solicitor, or any clerk, accountant, or other agent, at the instance of the solicitor, is privileged: Bustros v. White, 1 Q.B.D. 423. A party himself is not bound to disclose matters as to which

Rules 287-289

his information is derived from privileged communications, the matters not being merely statements of fact patent to the senses: Kennedy v. Lyell, 23 Ch.D. 387; 9 App. Cas. 81. Letters passing between a trustee and his solicitor relating to the trust before action brought are not privileged as against the *cestui que trust*: *Re* Mason, 22 Ch.D. 609; *Re* Postlethwaite, 35 Ch.D. 722. Communications made to a solicitor by his client before the commission of a crime for the purpose of being guided or helped in the commission of it are not privileged from disclosure: R. v. Cox, 14 Q.B.D. 153.

(2) Documents relating exclusively to the party's own title or case, or to the evidence by which it is to be established, and not relating also to the title or case of the opposite party.

(3) Documents irrelevant to the questions in the action.

(4) Documents tending to criminate the party: Webb v. East, 5 Ex. D. 23, 108.

(5) Documents relating to the public service: Bradley v. McIntosh, 5 O.R. 227.

(6) That portion of a document containing the names of a party's witnesses is privileged: Armstrong v. Toronto Ry. Co., 15 P.R. 208; but the report itself, unless obtained for the purpose of submission to a solicitor for the purpose of being laid before him for advice, or in view of anticipated or threatened litigation, or after litigation commenced, would not be privileged: Betts v. Grand Trunk Ry. Co., 12 P.R. 86.

Joint possession.—Documents which are in the joint possession of a party and some person not a party to the action cannot be ordered to be produced: Kearsley v. Philips, 10 Q.B.D. 465; Kettlewell v. Barstow, L.R. 7 Ch. 686; but if there is no interest which could be affected by their production other than the interest of the parties to the action, they will be ordered to be produced: London & Yorkshire Bank v. Cooper, 15 Q.B.D. 473.

Fees and Costs.—Counsel Fees.

288. Where, in a contested case for more than $100, an agent has been employed by the successful party in the conduct of the cause or defence, the Judge shall not direct a fee to be taxed, pursuant to section 208 of the Act, unless such agent is a barrister or solicitor.

Barrister or solicitor.—A non-professional agent may conduct the case or defence: *see* vol. 1, pp. 164, 170. The rule evidently contemplates the case or defence being conducted at the trial "or contest" by a barrister or solicitor, and it would seem that no fee could be taxed if a clerk or student conducted the same. Under rule 295, the application for the fee must be made at or immediately after the trial, or hearing, or final disposal of the case.

289. A case shall be considered "contested,"

(1) Where a defence is put in, disputing a claim for more than $100, and a counsel or solicitor has been retained to prosecute or defend the claim in Court, at the sittings, and the case comes down to trial, whether any actual contest is made at the Court or not.

Rule 289

(2) Where a defence is put in, disputing a claim for more than $100, and a counsel or solicitor has been retained to make an application under section 111, and an order is made therein by the Judge empowering the Clerk to enter final judgment.

(3) Where a defence is put in, disputing a claim for more than $100, and a counsel or solicitor has been retained to prosecute the claim in Court, and the defendant afterwards and before the opening of the Court, confesses judgment, or pays or settles the claim so short a time before the sitting of the Court that the plaintiff cannot in the ordinary way be notified thereof, and without such notice, the counsel or solicitor so retained to prosecute the claim *bona fide*, attends the Court for that purpose.

(4) Where a defence is put in, disputing a claim for more than $100, and the defendant has retained a solicitor or counsel to defend the action for him in Court, and the plaintiff does not appear in Court to prosecute his action, or withdraws or discontinues his action so short a time before the sitting of the Court that the defendant cannot in the ordinary way be notified of such withdrawal or discontinuance, and without such notice his solicitor or counsel *bona fide*, attends the Court to defend such action.

The word "contested" is by this rule interpreted, and the solution of the points discussed in vol. 1, p. 290, is provided for.

Judgment under section 111.—Where judgment is moved for under section 111, the power to grant a counsel fee is confined to cases where an order is made by the judge empowering the clerk to enter final judgment. Under sub-section 4 of that section, the plaintiff may, in certain cases, obtain final judgment for part only of the claim. It would seem that a counsel fee might be allowed for obtaining such an order, but it is submitted only where the amount for which final judgment was ordered exceeded $100. On the

Rules 289-291

trial of the case for the remainder of the amount claimed a further fee might be allowed, but the total fees allowed in the case must not exceed $10: *see* section 208, vol. 1, p. 290. Under clauses 3 and 4, no fee is taxable unless a solicitor or counsel *bona fide* attends the court for the purpose of prosecuting the claim or defending the action. The object of the rule is evidently to allow a party the fee which is virtually earned, in many cases, before the trial, and it should not be put in the power of either party to defeat the allowance of such a fee merely by diligence in having due notice given just before the sitting of the court, so that no *bona fide* attendance could be made thereat.

290. A counsel fee may be ordered to be taxed in a contested case, under section 208.

(*a*) Where the plaintiff's claim exceeds $100;

(*b*) Or, in the case of interpleader, where the money claimed, or the value of the goods or chattels claimed, or the proceeds thereof exceeds $100;

(*c*) Or, where, in interpleader, the damages claimed by, or awarded to either party against the other party, or against the Bailiff exceed $60.

(*d*) In all other cases mentioned and referred to in sub-section (2) of section 148.

(*e*) Where the defendant gives notice of set-off or counterclaim and establishes the same to an amount exceeding $100, and judgment is given in his favor.

This rule extends the provisions of section 208 to other cases than those contemplated by that section. A fee will now be taxable in any case, no matter how small the amount involved, provided the parties have consented to an appeal to the Court of Appeal.

Witness Fees.

291. The Clerk shall determine (subject to appeal to the Judge) what number of witnesses shall be allowed on taxation of costs; the allowance for whose attendance shall be according to the scale, and before allowing disbursements to witnesses, the Clerk shall be satisfied that the witnesses attended, and that the claim or fees is just, and he may, and in case of dispute shall, require the party whose bill of costs is being taxed to furnish an affidavit of disbursements.

Taken from old rule 147. The clerk should tax the costs where practicable on the day on which the action or matter is tried or heard: *see* rule 174. **Rules 291-292**

Affidavit of disbursements.—The clerk is bound to require an affidavit of disbursements only in cases of dispute. He may, however, require the same in any case. No fees should be allowed for any witness who did not actually attend the court. Where it is necessary to keep witnesses in attendance more than one day, the fees for such attendance should be taxed: Alexander v. School Trustees of Gloucester, 11 P.R. 157. Witnesses called to establish something on which the party calling them failed may be disallowed: Latour v. Smith, 13 P.R. 214. The expenses of a witness whose testimony is clearly inadmissible, or whose testimony would not have supported any issue in the case, will not be allowed; but where a large number of witnesses were subpœnaed upon matters which were not gone into at the trial, and therefore the witnesses were not called, but it was shown by counsel's brief what each witness was to be called for and was expected to prove, and it was sworn that the witnesses were necessary and material witnesses, and were subpœnaed in good faith to substantiate the charges made, it was held that their witness fees should be taxed: *Re* Prescott Election Case, 32 U.C.R. 303.

Professional witnesses.—By 57 Vict., c. 25, no fees of professional persons giving evidence or producing documents are allowable without a certificate from the judge. The following is the full text of the Act:—

57 Victoria, Chapter 25 (1894).

AN ACT RESPECTING WITNESS FEES.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Fees of professional persons giving evidence, and certain officers producing documents.

1. Where upon the trial of any action or proceeding, any person is subpœnaed as a witness, and gives evidence, who is entitled under any statute or rule of Court or other provision having the force of law in this Province, to receive an increased witness fee for evidence given by him in his professional capacity, or as an expert, no greater fee shall be allowed to such witness on any taxation of costs than those payable to witnesses in other cases, unless the judge or other officer before whom such action or other proceeding was tried shall certify that the evidence given by such witness was of an expert or professional character or was produced on account of the skill or professional knowledge possessed by such witness; and no public official or other witness subpœnaed or called upon to produce before any Court or other tribunal any public or other document shall be entitled to more than ordinary witness fees, anything in the rules of Court or tariffs prescribed thereunder to the contrary notwithstanding.

292. In case of any process or paper received for service or execution from a "Foreign Court," the Clerk so receiving the same and procuring the service or execution thereof shall, on returning the same, give a full and correct statement, in detail, of the items of all charges made for fees and disbursements in respect of such service or execution of process, and the Clerk of the

Rules 292-293

Home Court shall report to the Judge of his own county any charge made by the Clerk of the "Foreign Court" in excess of the allowance for fees made by the tariff.

Similar to rule 177.

It is obligatory upon the clerk of the home court to report to the judge of his county any excess in the fees charged for services by the clerk of a foreign court. The judge of the home court should report improper charges to the judge of the county in which the foreign court is situate.

Staying Proceedings.

293. The Judge may stay proceedings in a Division Court in any case in which, if the action were in the High Court, an order to stay might be made.

See rule 241, and notes thereto.

In the High Court.—By the Judicature Act, R.S.O., c. 44, s. 52, s-s. 9, it is enacted :—

> **"9.** No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction ; but every matter of equity upon which an injunction against the prosecution of any such cause or proceeding might have been obtained, prior to The Ontario Judicature Act, 1881, either conditionally or on any terms or conditions, may be relied on by way of defence thereto :
>
> "Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it, if it shall think fit ; and any person, whether a party or not to any such cause or matter, who would have been entitled, prior to The Ontario Judicature Act, 1881, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice ; and the Court shall thereupon make such order as shall be just."

A stay of proceedings may be granted :—

(1) Where an action or proceeding is frivolous or vexatious : *see* Ross v. Edwards, 15 P.R. 150 ; Metropolitan Bank v. Pooley, 10 App. Cas. 210 ; Lawrance v. Lord Norreys, 15 App. Cas. 210. As where a second action is brought for the same cause of action as a former action which was dismissed so that a plea of *res judicata* must succeed : Macdougall v. Knight, 25 Q.B.D. 1.

(2) Where an action is brought against a judge for any act done in that capacity : Cobbett v. Field, W.N., (1877) 8 ; Hind v. Brett, W.N., (1883) 37.

(3) Where an action is brought against a witness for defamatory statements made by him when giving evidence before a court of justice : Dawkins v. Lord Rokeby, L.R. 7 H.L. 744.

(4) Where the plaintiff admits the claim to be without foundation: Jamieson v. Laing, 7 P.R. 404.

(5) Where a suit has been compromised: Eden v. Naish, 7 Ch.D. 781; *Re* Gaudet, 12 Ch.D. 882; *see* Johnston v. G.T.R., 25 O.R. 64; but a compromise entered into by a solicitor contrary to instructions may be set aside on payment of costs: Watt v. Clark, 12 P.R. 359.

(6) For non-payment of costs: Stewart v. Sullivan, 11 P.R. 529; Wright v. Wright, 12 P.R. 42.

(7) One of two cross-actions between the same parties may be stayed: Thompson v. Great Western Ry. Co., 9 Q.B.D. 320; Taylor v. Bradford, 9 P.R. 350; Conmee v. C.P.R. (No. 2), 11 P.R. 222.

(8) Where there is another action pending in another court for the same cause: rule 278; R.S.O., c. 44, s. 52, s-s. 10.

(9) Where there are several actions in which the questions in dispute are substantially the same, and the evidence in each would be substantially the same if they were all tried: Niagara Grape Co. v. Nellis, 13 P.R. 179; Vaughan Road Co. v. Fisher, 14 P.R. 340; *see* Williams v. Township of Raleigh, 14 P.R. 50.

(10) A stay may also be stayed until security for costs is given: *see* rule 294.

(11) Where several actions are brought against sureties and a separate action is brought against the principal debtor and is pending, the actions against the sureties may be stayed pending the determination of the action against the principal: County of Essex v. Wright, 13 P.R. 474.

294. Proceedings may be stayed by order of the Judge in an action until security shall be given to the defendant for the costs of and incidental to his defence, in a case and under circumstances which would justify such an order being made in the High Court.

Security for costs.—This rule is new, and adopts as law the decision in Fletcher v. Noble, 9 P.R. 257: *see* vol. 1, p. 393.

Security for costs may be ordered in the High Court:—

(1) Where the plaintiff ordinarily resides out of Ontario: C.R. 1242, 1245*a*, 1377.

(2) Where a plaintiff has brought a former action or proceeding for the same cause, which is pending either in Ontario or in any other country, or in which a judgment or order has passed against him in such action for costs, and such costs have not been paid: C.R. 1243.

(3) Where the plaintiff sues as an informer or seeks to recover any penalty given to any informer or person who sues for the same under any statute or law in which any penalty is given to any person who sues for the same, either for his sole benefit, or for the benefit of the Crown, or partly for his benefit and partly for the benefit of the Crown, and an affidavit is made by the defendant showing that the action is brought to recover a penalty, and that, in the belief of the deponent, the plaintiff or informer is not possessed of property sufficient to answer the costs of the action in case a verdict is given or judgment rendered in favor of the defendant, and that he, the defendant, has a good defence to the action upon the merits as he is advised and believes: C.R. 1244.

Rule 294 (4) Where an action is brought in the name of an insolvent person for the benefit of some other person: Boice v. O'Loane, 7 P.R. 359; *Re* Rainy Lake Lumber Co., 11 P.R. 314; Clark v. St. Catharines, 10 P.R. 205; Delaney v. MacLellan, 13 P.R. 63.

(5) In actions against justices of the peace where the plaintiff is not possessed of such property as would be forthcoming and available in execution should the defendant succeed: 53 Vict., c. 23; Bready v. Robertson, 14 P.R. 7. The affidavit must show a good defence upon the merits; but affidavits controverting the defence will not be received, nor will any nice questions of law or any reasonable question of fact be dealt with on the application: Southwick v. Hare, 15 P.R. 222.

(6) Where a false address is given by plaintiff: *Re* Sturgis, 34 W.R. 163; Fournier v. Hogarth, 15 P.R. 72.

(7) Where there are several plaintiffs not having joint interests, and some of them are resident out of the jurisdiction, the latter will be required to give security for costs: Irving v. Clark, 12 P.R. 29; Smith v. Silverthorn, 15 P.R. 197.

(8) Where a married woman, though unnecessarily, sues by an insolvent next friend: *Re* Thompson, 38 Ch.D. 317.

(9) A defendant, resident out of the jurisdiction, who admits the plaintiff's claim and sets up a counterclaim founded upon a separate transaction, may be ordered to give security for costs: Sykes v. Sacerdoti, 15 Q.B.D. 423.

(10) Claimants in garnishee and interpleader proceedings, resident out of the jurisdiction, may, in the High Court, be ordered to give security for costs: Canadian Bank of Commerce v. Middleton, 12 P.R. 121; Tomlinson v. Land and Finance Corporation, 14 Q.B.D. 539.

It will be noticed that the foregoing rule 294 only applies to security for costs to be given *to a defendant*, and does not apply to instances 9 and 10.

Proceedings may be stayed.—The rule does not give power to limit the time within which security may be given, nor any power to dismiss the action for failure to give security. No provision is made for the revival of the action if the court day has passed before the security is given. The defendant is summoned only for a certain day, and, in the absence of an adjournment on that day (or a failure to hold court, rule 253), the action is at an end: Forbes v. Michigan Central Ry. Co., 20 A.R. 584, 589; *see* rule 161. If the proceedings are wholly stayed, and the day for which the defendant had been summoned passes without due adjournment, the stay may thus operate as a dismissal. It may be necessary to provide in every order for this emergency by reserving leave to the plaintiff to move for an adjournment at any sittings of the court when the action shall come on for trial.

Form of security.—In making the order for security, the judge may adopt the practice of the High Court: section 304, vol. 1, p. 393. The order should prescribe the kind of security to be given. It is suggested that it should provide that, if given by bond, it should be made in favor of the plaintiff, and filed with the clerk after being approved by the judge, or by the defendant or his solicitor, and, if by deposit of a sum of money, it should be paid into court. It should also provide that the bond or the money should be subject to the further order of the judge.

Allowance of Costs by Judge.

295. Where the Judge directs a fee to be taxed to the successful party under section 208, or orders any other fees or costs to be taxed, or certifies for costs in any case, or where the allowance of any particular costs under any of the sections of the Act, or any of the rules of Court, or under any other statutory provision, the application therefor should be made at, or immediately after the trial or hearing, or final disposal of the cause. The Judge may make such direction or order on his list, at the time of the trial, or on the back of the summons, or when the action is finally disposed of, in case of a postponed judgment.

Taken from Eng. C.C.R., 1889, Ord. L.A., r. 6.

The rule is to be read with sections 207, 208, and rule 174, and with 57 Vict., c. 25.

Costs follow event.—Under section 207, in default of any special direction by the judge, the costs abide the event of the action. Under section 207, sub-section 2, the judge has jurisdiction over the costs of the action or other proceedings when the plaintiff fails to recover judgment by reason of the court having no jurisdiction over the subject-matter thereof. Under section 209, the judge may order the defendant to pay costs incurred in preparing for trial and in attending court, although the defendant may have confessed judgment. Under section 210, no costs in an action on a Division Court judgment are allowable except by an order of the judge. Under 57 Vict., c. 25, professional witness fees are not allowable unless the judge certifies that the evidence given by the witness was of an expert or professional character, or was produced on account of the skill or professional knowledge possessed by such witness: *see* rule 291. Under rule 289, a counsel fee may be allowed in certain cases, although the action is not actually contested in court. In all these cases application should be made at or immediately after the trial or hearing. If judgment is reserved, and the question of costs or counsel fee is not disposed of by the written judgment delivered by the judge, application should be made to him immediately.

Officers' Fees.

296. The fees set forth in the tariff marked "Schedule of Clerks' fees" and "Schedule of Bailiffs' fees" shall be the fees to be received by the several Clerks and Bailiffs of Division Courts, on and after the day that these rules shall come into force, for and in relation to the duties and

Rules 296-298

services to be performed by them as officers of the said Courts, and shall be in lieu of all other fees heretofore receivable for the same proceedings.

Identical with old rule 164.

The tariff of fees is now set forth in forms 1, 2, and 3.

The tariff of fees in actions under $10 is now set forth in 57 Vict., c. 23, and will be found among the forms immediately after form 3.

The judges of the Division Courts have no discretion to authorize the taxation or allowance of costs to any officer of the court other than those to be found in the tariff of fees as authorized: *see* section 304, vol. 1, p. 393.

297. The Clerk shall not be required to take any proceeding, unless and until the fee or fees therefor have been paid to him as provided by section 54 of the Act.

See notes to section 54, p. 45.

The clerk is entitled to his fees before being required to take any proceedings: *see* Parke v. Clarke, 14 C.L.T. 32.

298. In every case in which an attachment has issued against an absconding debtor, or an execution has issued against the property of a judgment debtor, and a plaintiff or defendant, judgment creditor or other person interested in the claim, judgment or execution, who would be entitled to the proceeds thereof (if the money were made in satisfaction of the attachment or execution), insists upon the Bailiff making an attempt to find property, whereby mileage and expenses are to be incurred, it shall be necessary for a deposit to be made with the Clerk of the amount of Bailiff's fees, and, provided a proper endeavor (although unsuccessful) has been made by the Bailiff after such deposit of fees, to the satisfaction of the Clerk, but subject to appeal to the Judge, to secure property whereon to levy in such case, he shall be entitled to such mileage.

This is an extension of item 7 of the tariff of bailiffs' fees: form 2.

Hitherto, it has been the duty of the bailiff, upon receiving an execution, to seize any goods or chattels of the defendant in his bailiwick, and, if he returns an execution *nulla bona*, he is liable, in an action against him, to be mulcted in damages in the event of the plaintiff proving that the defendant had goods which might have been seized: *see* vol. 1, p. 28. It was necessary, therefore, for a bailiff to make enquiries before returning an execution *nulla*

bona, but on any such return no mileage could be allowed: *see* vol. 1, p. 305. Two facts must now be shown to entitle a bailiff to mileage, although no goods were seized:— Rules 298-300

(1) The judgment or attaching creditor must insist upon the bailiff making an attempt to find property; and

(2) A proper endeavor must be made by the bailiff to secure property whereon to levy.

The amount of bailiff's fees.—No procedure is provided for ascertaining the amount of fees which must be deposited. It would appear that the proper amount to be deposited would be such sum as the clerk would be entitled to allow for mileage in the event of the journey insisted upon by the judgment or attaching creditor proving abortive.

Appeal to the judge.—The allowance, by the clerk, of mileage to a bailiff when his exertions have been unsuccessful is subject to appeal, and the judge, on such appeal, may review the clerk's finding that a proper endeavor has been made to levy.

299. Before an order may be made for issuing an execution for the payment of fees which ought to have been paid to the Clerk in the first instance according to section 54, an application must be made to the Judge, upon affidavit of the facts, and a summons must issue for the party on whose behalf the proceedings upon which fees are alleged to be unpaid were taken, to show cause why payment thereof should not be enforced by order of the Judge and by execution as provided by section 55 of the Act.

This rule adopts the suggestions made in vol. 1, pp. 45 and 46.

Forms of proceedings are now provided. For form of summons, *see* form 56; for form of order, *see* form 130; for form of execution, *see* form 143.

It will be noticed that the forms include the payment of costs of the proceedings. It was stated in vol. 1, p. 46, that the order could not include costs. The forms are probably a sufficient enactment of a rule by the judges to authorize the imposition of costs. The right of a judge exercising jurisdiction as *persona designata* to impose costs is conferred by 56 Vict., c. 13, s. 1.

Postage and Registration of Letters.

300. All letters enclosing any papers in a cause sent from one Division Court officer to another, or to a party to a suit, or to the Judge, and unless otherwise provided for in the Act or by these rules, all necessary notices sent by the Clerk, shall be prepaid and registered; when papers are forwarded to the Judge, postage stamps for return postage must in all cases be enclosed. The costs

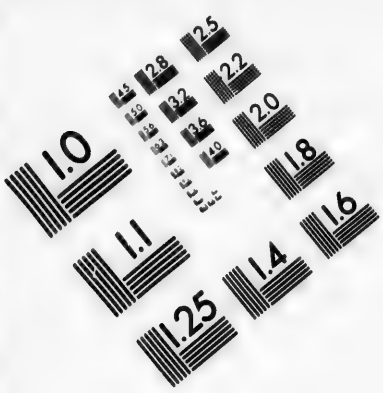
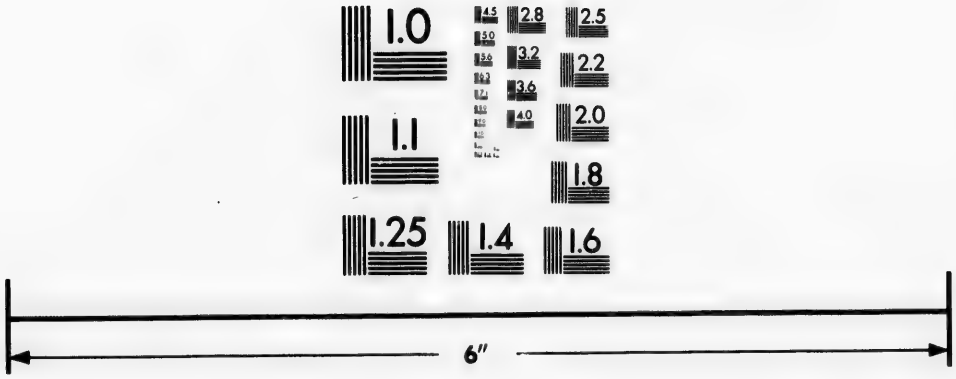
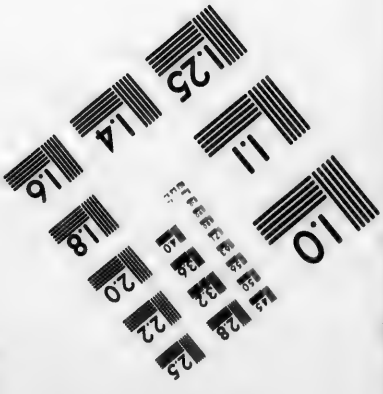




IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Rules 300-303

of postage and registration shall in all cases be costs in the cause.

Taken from old rule 145.

Prepaid and registered.—By the preservation of the registration receipt, the clerk is able, in all cases, to prove the mailing of a letter at the time shown thereby. Rule 169 already covered the case of notices required to be given to parties to the suit.

Appeals from Division Courts.

301. In case of an agreement not to appeal (section 116) a memorandum of such agreement, in writing, shall be prepared and shall be signed by the parties, their solicitors or agents, and be filed with the Clerk before the trial is entered upon.

Under section 116, the judge is to note, in his minutes, whether the agreement is filed or not, and the minutes are conclusive evidence upon that point. This rule applies to interpleader proceedings: *see* vol. 1, pp. 165 and 166; form 192.

302. When the Judge of the Court of Appeal has pronounced judgment, either party may deposit the same, or an office copy thereof, with the Clerk of the Division Court, and upon being so deposited the judgment must be filed, and may be enforced as if it had been made by such Division Court.

May deposit the same.—It is evidently intended that the formal certificate of judgment issued by the registrar of the Court of Appeal, or an office copy thereof, is the "judgment" to be deposited. Section 152 of the Act requires the Division Court to proceed in accordance with the order, direction, and certificate of the Court of Appeal.

Office copy.—This means a copy certified by the registrar of the Court of Appeal.

303. A new trial in pursuance of the order of the Judge of the Court of Appeal, shall be entered for trial at the Division Court which shall be holden next after twelve clear days from the time when such order, or office copy thereof, shall have been deposited as aforesaid, unless the parties agree that it shall take place sooner, or the Judge otherwise order, and it shall be conducted in the same manner as any new trial granted by the Division Court itself.

New trial after appeal.—Hitherto no procedure has been prescribed for holding a new trial after an appeal. The steps to be taken to obtain a new trial are now clearly defined. Rules 303-305

Twelve clear days.—The day of depositing the order and the day of the trial must be excluded.

Unless parties agree.—It is not required that the agreement shall be in writing; but it would be better, if the trial is to take place sooner than prescribed, that an agreement in writing should be signed by both parties and deposited with the clerk.

Or the judge otherwise order.—Should the party having the carriage of the order in appeal neglect to file the certificate within a reasonable time, the opposite party might obtain an office copy and file the same; and if less than twelve days should elapse between the deposit and the next sittings of the court, the judge would have good grounds for ordering a new trial to be proceeded with at that sittings.

304. If the order of the Judge of the Court of Appeal be that judgment shall be entered for either party, then such judgment shall be entered accordingly, and the successful party shall be at liberty to proceed on such judgment as on a judgment of the Division Court.

Judgment for either party.—The Court of Appeal has power to make any order which ought to have been made in the Division Court: section 152, vol. 1, pp. 229-231. On the deposit of the certificate of judgment in the Division Court, the clerk should make the necessary entry in the procedure book, and the judgment of the Court of Appeal would then be of the same effect as if originally given in the Division Court.

APPEALS.

Under Master and Servant Act (R.S.O., cap. 139), and amendments thereto, and under the "Act to Impose a Tax on Dogs for the protection of Sheep." (R.S.O., cap. 214) and other Acts.

305. Appeals may be made by master or servant:

(1) Against any conviction or order for the payment of wages;

(2) Against any order of dismissal from service or employment, or,

(3) Against any decision of any Justice under the Act. The complaint before the Justice in all cases being laid by the servant.

Rule 305 The provisions of R.S.O., c. 139, relating to appeals to the Division Court are the following :—

R.S.O., Chapter 139.

AN ACT RESPECTING MASTER AND SERVANT.

Appeals.

Mode of appeal.

14. All appeals from or against any conviction or order for the payment of wages, or any order of dismissal from service or employment, or against any decision of any justice or justices under this Act, shall be made to the Division Court, holden in the division in which the cause of action arose, or in which the party complained against, or one of them, resided at the time of the making of the complaint; and in case of dismissal of the appeal or affirmance of the conviction, order or decision, the Court appealed to shall order and adjudge the offender to be punished according to the conviction, or shall enforce the order for payment of wages or of dismissal, as the case may be, and for the payment of the costs awarded, and shall, if necessary, issue process for carrying such judgment into effect.

Notice of appeal.

15. The person proposing to appeal shall give to the opposite party a notice in writing of his appeal, and of the cause or matter thereof, within four days after such conviction, order, decision or judgment, and eight days, at least, before the holding of the Court at which the appeal is to be heard, and shall also, within the four days, enter into a bond to the opposite party with two sufficient sureties, to be approved of by the clerk of the Court in the penal sum of $100, conditioned personally to appear at the said Court and try the appeal and to abide the judgment of the Court thereon, and to pay such costs as shall be by the Court awarded, and upon the notice being served and bond executed and filed with the clerk, all proceedings on the order, conviction or decision appealed against shall be stayed until the determination of the appeal.

Case to be entered by clerk.

16. The clerk shall, on the bond and notice of appeal with an affidavit of service thereof being filed in his office, enter the cause in his procedure book, and the appeal may be tried with a jury if the appellant file with the clerk at the time of filing the bond a notice requiring a jury, or if the respondent, within four days after the service of the notice of appeal upon him, file a notice with the clerk, requiring a jury, and if the proper fees are, in either case, deposited with the clerk; otherwise the judge may try the appeal without a jury or may summon a jury from the body of the Court as to him seems meet.

Proceedings in case of appeal dismissed or affirmed.

17. In case of the dismissal of the appeal or affirmance of the conviction, order or decision, the judge may order and adjudge the offender to be punished according to the conviction or order, or he may direct the enforcement of the order for payment of wages or of dismissal, as the case may be, with the payment of the costs awarded, and any order or orders made by him in the premises shall be enforced and carried into execution by the officers of the Court. The judge may direct execution to issue for the levying of any moneys or costs awarded or ordered to be paid, and in the event of any such moneys or costs being payable by the appellant, which have not been levied under execution against the goods of the appellant, the judge may order the bond to be delivered up to the respondent, who shall be entitled to recover the amount due him with costs, in any Division Court having jurisdiction.

The amendments are the following: Rule 305

Statutes of Ontario, 1889, 52 Victoria, Chapter 22.

AN ACT FOR THE ENFORCEMENT OF ORDERS UNDER THE ACT RESPECTING MASTER AND SERVANT.

(Assented to March 23rd, 1889.)

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Proceedings for enforcing order for payment of wages.

1. Where proceedings under The Act Respecting Master and Servant are taken before a police magistrate, and payment of wages is ordered by him to be made by the master or employer to the servant or laborer, and the same are not paid within the time limited by the order, the same proceedings may be taken by the person claiming the benefit of the order as may be taken by a party having an unsatisfied judgment or order in a Division Court for the payment of any debt, damages, or costs, as respects the examination of the judgment debtor touching his estate and effects, the means he has of discharging his liability, and the disposal he has made of any property, and the police magistrate shall have the like power and authority to enforce payment of the debt as are possessed by the Division Court judge in like cases; and the practice and proceedings thereon shall be the same as nearly as may be and have the same effect as provided in The Division Courts Act with respect to judgment debtors.

Rev. Stat., c. 51, ss. 235-247.

Limit of time for payment.

2. The said police magistrate, if he thinks fit, may name in the order for payment of wages, such time not exceeding twenty-one days, as to him may seem just and reasonable for the payment of the same and costs; and in case of non-payment within such time, the complainant shall be entitled to take forthwith the proceedings for enforcing payment provided by The Act respecting Master and Servant and this Act.

Rev. Stat., c. 139.

By 56 Vict., c. 24, the jurisdiction of a city police magistrate was extended, and by section 24 of that Act the orders of a police magistrate are subject to appeal as the orders of a Division Court judge would be in like cases: and by section 25 power is given to file the order of a police magistrate in a Division Court, and the same may then be enforced as a judgment of the said court. The material provisions of the Act, so far as the Division Court procedure is concerned, will be found in the appendix.

The provisions of the Act to impose a tax on dogs for the protection of sheep which are referred to in the rule are the following:—

R.S.O., Chapter 214.

AN ACT TO IMPOSE A TAX ON DOGS, AND FOR THE PROTECTION OF SHEEP.

Extent of liability of owner or keeper of dog.

15. (1) The owner of any sheep or lamb killed or injured by any dogs shall be entitled to recover the damage occasioned thereby from the owner or keeper of such dog, by an action for damages, or by summary proceedings before a justice of peace, on information or complaint before such justice, who is hereby authorized to hear and determine such complaint, and proceed thereon in the manner provided by The Act respecting Summary Convictions before Justices of the Peace, and Appeals to General Sessions, in respect to pro-

Rev. Stat., c. 74.

Rule 305

ceedings therein mentioned; and such aggrieved party shall be entitled so to recover on such action or proceedings, whether the owner or keeper of such dog knew, or did not know, that it was vicious or accustomed to worry sheep.

Apportionment of damage.

(2) If it shall appear before the court or judge at the trial of any such action for damages, or before such justice at the hearing of the said information or complaint before him, that the damage, or some part of the damage, sustained by such aggrieved party was the joint act of some other dog or dogs and of the dog or dogs owned or kept by the person charged in such information or complaint, the court, judge, or justice shall have power to decide and apportion the damages sustained by the complainant among and against the respective owners or keepers of the said dogs as far as such owners or keepers are known, in such shares and proportions as such court, judge, or justice shall think fit, and to award the same by the judgment of the said court or judge, or in the conviction of such justice, on behalf of such aggrieved person.

Jury.—When the case is tried before a jury, the jury is to apportion the damage: Fox v. Williamson, 20 A.R. 610.

(3) When, in the opinion of the court, judge, or justice, the damages were occasioned by dogs, the owner or owners of which are known, and dogs, the owner or owners of which are unknown, or the owners or owners of which have not been summoned to appear before the court, judge, or justice, the court, judge, or justice may decide and adjudge as to the proportion of the damages which, having regard to the evidence adduced as to the strength, ferocity, and character of the various dogs shown to have been engaged in committing such damage, was probably done by the dogs, the owner or owners of which have been summoned to appear before the court, judge, or justice, and shall determine in respect thereof and apportion the damage which the court, judge, or justice decides to have been probably done by the dogs whose owners have been summoned, amongst the various owners who have been summoned, as aforesaid.

(4) The same proceedings shall be thereupon had against any person found by the judge or justice to be the owner or keeper of the dog or dogs which, by such court, judge, or justice, shall have been found to have contributed to the damage sustained by the person aggrieved, as if the information or complaint had been laid, in the first instance, against such person.

(5) The court, judge, or justice, shall not decide and apportion the damage against any person other than the person in the information or complaint first charged, nor award the same in the judgment or conviction without such other person having been summoned to appear before the court, judge, or justice, having had an opportunity of calling witnesses.

(6) Appeals against any conviction, apportionment, or order made under this section, shall be made to the Division Court holden in the division in which the cause of action arose, or in which the party complained against, or one of them, resided at the time of making the complaint; and the proceedings shall be the same, as nearly as may be, as on appeals under The Act respecting Master and Servant.

Rev. Stat., c. 139.

306. The forms, Nos. 247 to 250 inclusive, shall be used and applied in proceedings on appeals to the Division Court, under *The Act Respecting Master and Servant*, (R.S.O., cap. 139, and amendments thereto), being varied where necessary to meet the particular case.

The forms 247 to 250 are also applicable to proceedings under "The Act to Impose a Tax on Dogs for the Protection of Sheep." The bond, form 248, should have annexed to it an affidavit of justification, showing the sufficiency of the sureties: *see* rule 312. For form of affidavit of justification, *see* additional forms. And also an affidavit of execution of the bond: *see* note appended to form 249. The clerk is not, however, bound to require these. The appellant is bound at the time of filing bond to furnish the clerk in writing with the post office address of the justice or justices against whose decision the appeal is made: rule 314. If the appellant requires a jury, he must at the same time file his notice for jury with the clerk, and deposit the fees: rule 316. The form of execution for enforcing the order made on appeal is form 156.

307. The said forms may also be used and applied, being varied for that purpose, in proceedings on appeals to the Division Court, under "*The Act to impose a Tax on Dogs for the protection of Sheep.*"

The forms referred to are forms 247 and 250, consisting of notice of appeal, bond, form of approval of bond, and demand of jury: *see* notes to rule 306, and *see* rules 311 to 316.

After the disposition of the appeal, the order made thereon may be enforced by execution from the Division Court. Form 156 may be varied to suit the circumstances.

308. The said forms may also be used and applied, being varied for that purpose in proceedings on appeals to the Division Court, under *The Consolidated Assessment Act*, 1892, or under Acts amending the same.

The sections of The Consolidated Assessment Act, 1892, referred to are the following:—

55 Victoria, Chapter 48.

AN ACT TO CONSOLIDATE THE ACTS RESPECTING THE ASSESSMENT OF PROPERTY.

(Assented to 14th April, 1892.)

Appeal from Court of Revision.

68. (1) An appeal to the county judge shall lie, not only against a decision of the Court of Revision on an appeal to said court, but also against the omission, neglect, or refusal of said Court to hear or decide an appeal.

Rule 308

Service of notice of appeal.

(2) The person appealing shall, in person or by his solicitor or agent, serve upon the clerk of the municipality (or assessment commissioner, if any there be), within five days after the date herein limited for closing the Court of Revision, a written notice of his intention to appeal to the county judge, except in the municipality of Shuniah, in which municipality the notice shall be given within ten days after the first day of August in every year, and except in municipalities coming within the provisions of chapter 185 of the Revised Statutes, 1887.

Day for hearing.

(3) The clerk shall, immediately after the time limited for filing said appeals, forward a list of the same to the judge, who shall then notify the clerk of the day he appoints for the hearing thereof, and shall, if in his opinion the appeals or any of them appear to involve the calling or examination of witnesses, fix the place for holding such Court within the municipality from the Court of Revision of which such appeal is made, or at the place nearest thereto where the sittings of the Division Court within his jurisdiction are held.

Places for hearing appeals from Courts of Revision.

Clerk to notify parties.

(4) The clerk shall thereupon give notice to all the parties appealed against in the same manner as is provided for giving notice on a complaint under section 64 of this Act; but in the event of failure by the clerk to have the required service in any appeal made, or to have the same made in proper time, the judge may direct service to be made for some subsequent day upon which he may sit.

List of appellants, etc., to be posted up by clerk.

(5) The clerk of the municipality shall cause a conspicuous notice to be posted up in his office, or the place where the council of the municipality hold their sittings, containing the names of all the appellants and parties appealed against, with a brief statement of the ground or cause of appeal, together with the date at which a Court will be held to hear appeals.

Clerk of Court.

(6) The clerk of the municipality shall be the clerk of such Court.

Hearing and adjournment

Proviso as to Shuniah, etc.

(7) At the Court so holden, the judge shall hear the appeals and may adjourn the hearing from time to time, and defer judgment thereon at his pleasure, but so that all the appeals may be determined before the 1st day of August, except in the municipality of Shuniah (in which municipality all such appeals shall be determined before the 15th day of September in every year), and except in the cases provided for in sections 52 and 54, and except in municipalities coming within the provisions of chapter 185 of the Revised Statutes, 1887.

Assessment roll to be produced to the Court, and amended, etc.

69. At the Court to be holden by the county judge, or acting judge of the Court, to hear the appeals hereinbefore provided for, the person having charge of the assessment roll passed by the Court of Revision shall appear and produce such roll, and all papers and writings in his custody connected with the matter of appeal, and such roll shall be altered and amended according to the decision of the judge, if then given, who shall write his initials against any part of the said roll in which any mistake, error, or omission is corrected or supplied; and if the decision is not then given, the clerk of the Court shall, when the same is given, forthwith alter and amend the roll according to the same, and shall write his name against every such alteration or correction.

Amendments, how certified

Powers of judge sitting in appeal from Court of Revision.

70. In all proceedings before the county judge, or acting judge of the Court, under or for the purposes of this Act, such judge shall possess all such powers for compelling the attendance of, and for the examination on oath of all parties, whether claiming or objecting or objected to, and all other persons whatsoever, and for the production of books, papers, rolls, and documents, and for the enforcement of his orders, decisions, and judgments as belong to or might be exercised by him, in the Division Court or in the County Court. **Rule 308**

Style of proceedings.

71. All process or other proceedings in, about, or by way of appeal, may be entitled as follows:

In the matter of appeal from the Court of Revision of the , of

, Appellant,

and

, Respondent,

and the same need not be otherwise entitled.

Costs to be apportioned by the judge, and how enforced.

72. The costs of any proceedings before the Court of Revision, or before the judge as aforesaid, shall be paid by or apportioned between the parties in such manner as the Court or judge thinks fit, and where the costs are ordered to be paid by any party claiming or objecting or objected to, or by an assessor, clerk of a municipality, or other person, the same shall be enforced, when ordered by the Court of Revision, by a distress warrant under the hand of the clerk and the corporate seal of the municipality, and when ordered by the judge, by execution to be issued as the judge may direct, either from the County Court or the Division Court within the county in which the municipality or assessment district, or some part thereof, is situated, in the same manner as upon an ordinary judgment for costs recovered in such Court.

What costs chargeable.

73. The costs chargeable or to be awarded in any case may be the costs of witnesses, and of procuring their attendance, and none other; and the same are to be taxed according to the allowance in the Division Court for such costs; and in cases where execution issues, the costs thereof, as in the like Court, and of enforcing the same, may also be collected thereunder.

73*a*. County Court judges shall be entitled to receive from the municipality as their expenses, for holding Courts in the various municipalities other than the county town, for the purpose of hearing appeals from the Court of Revision, under the provisions of this Act, the same sums as they are allowed for holding Courts for revising voters' lists.

Decision of county judge to be final.

74. The decision and judgment of the judge, or acting judge, shall be final and conclusive in every case adjudicated, and the clerk of the municipality shall amend the rolls accordingly.

Copy of roll to be transmitted to county clerk.

75. When, after the appeal provided by this Act, the assessment roll has been finally revised and corrected, the clerk of the municipality shall, within ninety days, transmit to the county clerk a certified copy thereof, under a penalty of not less than $10, and not more than $20.

Appeals to Division Court.—There are no appeals to the Division Court provided for in The Consolidated Assessment Act, 1892. It is evidently intended to provide for the cases referred to in the sections above set out where an appeal is made from the Court of Revision to the county judge.

Rules 308-312

The Board of County Judges have no power conferred upon them to make rules respecting such appeals. At present, no power is given to the clerk of the court sitting, under the Assessment Act, to issue subpœnas. Where costs are awarded by the judge, under sections 72 and 73, the same may be enforced by execution, and form 156 may be used. Where professional witnesses are called, the provisions of 57 Vict., c. 25, and of rule 295, should be observed. None of the forms 247 to 250 appear to be at all applicable to the appeals provided for by this rule.

309. The rules regulating the practice in appeals, under *The Ditches and Watercourses Act*, in so far as the same are applicable, and the practice is not provided for by the said *Consolidated Assessment Act*, shall govern appeals, under the said last mentioned Act.

It is difficult to see what rules relating to ditches and watercourses are applicable to appeals under The Consolidated Assessment Act. The clerk of the Division Court has nothing to do with any such appeals. The only rule which might be applicable is the rule as to the issue of subpœnas. No power is given to the clerk of the municipality who is the clerk of the court sitting on the appeal to issue subpœnas. That power seems to be confined to the judge, under section 70; but if the board had any power to make such a rule, rule 333 would scarcely be applicable, as no particular clerk of a Division Court would be seized of the appeal. It would seem that rules 308 and 309 are *ultra vires*, but, even if *intra vires*, are practically useless.

MASTER AND SERVANT.

310. The appellant shall, before or at the time of the filing of the appeal bond, file with the Clerk the notice of appeal and an affidavit of service thereof. (R.S.O., cap. 139, sec. 16.)

Notice of appeal.—The notice must be given within four days after the conviction. The day of the conviction is not counted: *see* notes to rule 305.

Affidavit of service.—The notice must be served upon the opposite party. For form of affidavit of service, *see* form 28.

311. The Clerk, shall, on the bond and the notice of appeal with an affidavit of service thereof being filed in his office, enter the cause in his procedure book.

Entries in procedure book.—The appeal is to be entered as if it were an action.

312. The Clerk may require from the sureties to the appeal bond an affidavit of justification showing their sufficiency as such sureties.

Affidavit of justification.—For form, *see* additional forms. The clerk may also require an affidavit of execution. Form 35.

313. The Clerk's approval of the bond and of the sufficiency of the sureties may be endorsed on such bond.

For form of approval, *see* form 249.

314. The appellant shall, at the time of the filing of the bond, furnish the Clerk, in writing, with the post office address of the Justice or Justices against whose decision the appeal is made.

The post office address.—This means the address at which the justice is in the habit of receiving his letters. The rule assumes that the appellant will know this address. If he is not aware of it, he should apply to the justice therefor at the time of conviction, or as soon thereafter as possible. No obligation is imposed upon the justice to furnish it, but it is assumed that he would not refuse.

315. The Clerk shall give notice, by registered letter, to such Justice or Justices of the filing and approval of the bond.

Approval of bond.—It is only on the filing of approval of the bond that the appeal becomes properly lodged ; and, immediately upon the filing, all proceedings upon the order, conviction, or decision appealed against, are stayed until the determination of the appeal: R.S.O., c. 139, s. 15.

316. If the appellant require the appeal to be tried with a jury, he shall, at the time of the filing of the bond, file a notice and deposit with the Clerk, the proper and necessary fees.

Trial by jury.—Either party may require the appeal to be tried by a jury. The provisions of this rule and of the following, are contained in R.S.O., c. 139, s. 16, *ante* page 168. The jury would be summoned in the same manner as a jury in an ordinary Division Court action: *see* sections 154-172, vol. 1, pp. 232 to 244 ; 57 Vict., c. 23, ss. 5, 6, and 7.

317. If the respondent requires a jury, he shall, within four days after the service of the notice of appeal upon him, file with the Clerk a notice requiring a jury, and shall at the same time deposit the proper and necessary fees.

318. The Clerk and Bailiff, respectively, shall be entitled to receive for their services the like fees as in suits in the Court, and the same and necessary disbursements shall be paid to the Clerk before any proceeding is taken.

Rules 318-320

The tariffs of fees, forms 1, 2, and 3, are applicable to the fees to be paid on appeals. In case of non-payment, the clerk may enforce payment under section 55, and rule 299: *see* forms 56, 130, and 143.

319. The Clerk may issue, under the seal of the Court, subpœnas to witnesses, and the Bailiff may serve the same; such subpœnas shall be in the form, as nearly as may be, of those used in suits in the Division Courts.

May issue subpœnas.—All persons within the province served with subpœnas would be bound to attend. The practice in issuing subpœnas and the fees to be paid will be found in sections 131 and 134 of the Act: *see* vol. 1, pp. 188-195; *see* tariffs of fees, form 3. Penalties for disobeying subpœnas are provided for by section 133: *see* vol. 1, p. 193. For form of subpœna, *see* form 58. The style of cause will be that given in form 250.

LINE FENCES.

320. The appellant shall deliver to the Clerk of the Division Court a copy of the notice of appeal, with an affidavit of the service thereof, upon the fence-viewers and parties interested, and a copy of the award, certified by the Clerk of the municipality.

Line fences.—The Line Fences Act is R.S.O., c. 219. The sections applicable to appeals to the Division Court are sections 9 and 12, which are as follows:—

R.S.O., Chapter 219.

AN ACT RESPECTING LINE FENCES.

Award, how enforced.

9. The award may be enforced as follows:—The person desiring to enforce it shall serve upon the owner or occupant of the adjoining land a notice in writing, requiring him to obey the award, and if the award is not obeyed in one month after service of the notice, the person so desiring to enforce it may do the work which the award directs, and may immediately recover its value and the costs from the owner by action in any Division Court having jurisdiction in the locality; but the judge of the Division Court may, on application of either party, extend the time for making the fence to such time as he may think just.

Appeals.

12. Any person dissatisfied with the award made may appeal therefrom to the judge of the County Court of the county in which the lands are situate, and the proceedings on the appeal shall be as follows:—

Notice of appeal.

(1) The appellant shall serve upon the fence-viewers, and all parties interested, a notice in writing of his intention to appeal, within one week from the time he has been notified of the award; which notice may be served as other notices mentioned in this Act.

To clerk. (2) The appellant shall also deliver a copy of the notice to the clerk of the Division Court of the division in which the land lies, and the clerk shall immediately notify the judge of such appeal, whereupon the judge shall appoint a time for the hearing thereof, and, if he thinks fit, order such sum of money to be paid by the appellant to the said clerk as will be a sufficient indemnity against costs of the appeal.

Notice of hearing. (3) The judge shall order the time and place for the hearing of the appeal, and communicate the same to the clerk, who shall notify the fence-viewers and all parties interested in the manner hereinbefore provided for the service of other notices under this Act.

Powers of the judge. (4) The judge shall hear and determine the appeal and set aside, alter, or affirm the award, correcting any error therein, and he may examine parties and witnesses on oath, and if he so pleases may inspect the premises; and may order payment of costs by either party, and fix the amount of such costs.

Decision of judge to be final. (5) His decision shall be final; and the award as altered or confirmed shall be dealt with in all respects as it would have been if it had not been appealed from.

(6) The practice and proceedings on the appeal, including the fees payable for subpœnas and the conduct moneys of witnesses, shall be the same, as nearly as may be, as in the case of a suit in the Division Court.

Service of notice.—The notices may be served by leaving the same at the place of abode of the party necessary to be served, with some grown-up person residing thereon: *see* R.S.O., c. 219, s. 4, s-s. 3.

Affidavit of service.—*See* form 28; notes to rule 311.

Form of notice.—*See* form 244.

321. The Clerk shall immediately notify the Judge of such appeal.

The statute imposes this duty upon the clerk.

322. Upon receiving the Judge's order, appointing a time and place for the hearing of the appeal, the Clerk shall notify the fence-viewers and all parties interested, in the manner provided in *The Line Fences Act* for the service of notices.

The justice is required by the statute, upon receiving notice from the clerk of the appeal, to appoint a time and place for the hearing thereof: *see* section 12, sub-sections 2 and 3.

Notify the fence-viewers, etc.—This duty is imposed on the clerk by the Act. As to service of notices, *see* notes to rule 320.

323. If the time and place of hearing is at a sitting of the Division Court, the Clerk shall enter the matter on the Judge's list of causes for trial at such sitting, and at

Rules

the foot of such list, unless the Judge shall otherwise order.

It will be found convenient, in many cases, for the hearing of the appeal to take place at an ordinary sitting of the Division Court.

324. The Clerk may issue, under the seal of the Court, subpœnas to witnesses, and the Bailiff may serve the same. Such subpœnas shall be in the form, as nearly as may be, of those used in suits in the Division Courts.

See notes to rule 319. For form of subpœna, *see* form 58.

325. The Clerk and Bailiff shall, respectively, be entitled to receive for services the like fees as in suits in the Court, and the same and necessary disbursements shall be paid to the Clerk before any proceeding is taken.

See notes to rule 318.

326. Rule No. 138 of these rules, as to preparation of special judgment, shall be applicable to matters under *The Line Fences Act.*

Special judgments.—Rule 138 was taken from English C.C.R., 1889, Ord. xxiii., r. 2, which, however, does not possess the imperfections suggested in the notes to that rule, *ante* page 79.

327. After the Judge has finally determined the appeal and made his order, the Clerk shall certify to the Clerk of the municipality the said order, and the award as altered or confirmed, together with the costs, if any, allowed, and by whom to be paid.

Finally determined.—This means when the judgment has been finally settled and filed, as required by rule 138.

Certificate of clerk.—A copy of the order should be certified by the clerk of the court, and forwarded to the clerk of the municipality. The order then becomes part of the award, and section 9 of the Act, which is set out above, shows how the award is to be enforced. There does not seem to be any power for the Division Court judge to issue an execution for the costs allowed on the appeal except after action to recover the same under section 9. The costs of the appeal must be fixed by the judge in the order which is to be signed by him. By 53 Vict., c. 67, the judge may, in his order, fix the amount of his own expenses, in case he has inspected the premises in respect of which the appeal is made, and the municipality in which the property is situate must then pay him the amount of his fees. The amount paid will then become part of the amount awarded, and may be recovered under the provisions of section 9.

328. In case a sum of money has been paid by the appellant to the Clerk as an indemnity against the costs of the appeal, such Clerk shall hold the same, subject to the Judge's directions.

Under section 12, sub-section 2, of the Act respecting Line Fences, the judge may order security for costs to be given by the defendant. This rule will enable the judge to resort to the sum so deposited to pay the costs and his own expenses, should the decision be against the appellant, without resorting to the circuitous course provided by section 9 of the Act.

329. The Forms Nos. 244 to 246 inclusive, shall be used and applied in proceedings on appeals to the Judge of the County Court, under *The Line Fences Act.* (R.S.O., cap. 219, sec. 12.) Where necessary the forms can be varied to suit the particular case.

The forms consist of (1) notice of appeal; (2) order of judge fixing time and place, and for security for costs; and (3) final judgment on the appeal.

DITCHES AND WATERCOURSES.

330. Immediately upon receiving from the Clerk of the municipality the copy of the notice or notices of appeal and the certified copy of the award, the Clerk shall notify the Judge, of the appeal.

The Act respecting Ditches and Watercourses is now 57 Vict., c. 55.

The provisions respecting appeals are the following:—

57 Victoria, Chapter 55.

Appeals from award to county judge.

22. (1) Any owner dissatisfied with the award of the engineer, and affected thereby, may, within fifteen clear days from the filing thereof, appeal therefrom to the judge, and the proceedings on the appeal shall be as hereinafter provided.

Notice of appeal.

(2) The appellants shall serve upon the clerk of the municipality in which proceedings for the ditch were initiated a notice in writing of his intention to appeal from the award, shortly setting forth the grounds of appeal.

Clerk to notify judge and judge to fix time and place for hearing.

(3) The clerk, in the next preceding sub-section mentioned, shall, after the expiration of the time for appeal, forward by registered letter or deliver a copy of the notice or notices of appeal and a certified copy of the award, and also the plans and specifications (if any) to the judge, who shall forthwith upon the receipt of the registered letter, or documents aforesaid, notify the clerk of the time he appoints for the hearing thereof, and shall fix the place of hearing at the town hall or other place of meeting of the council of the municipality in which proceedings for the ditch were initiated, unless the judge for the greater convenience of the parties and to save expense shall fix some other place for the hearing. The judge

Rule 330

may, if he think proper, order such sum of money to be paid by the appellant or appellants to the said clerk as will be a sufficient indemnity against costs of the appeal; and the clerk upon receiving notice from the judge shall forthwith notify the engineer whose award is appealed against, and all parties interested, in the manner provided for the service of notices under this Act.

Inspection of premises by another engineer.

(4) Any appellant may have the lands and premises inspected by any other engineer or person, who, for such purposes, may enter upon such lands and premises, but shall do no unnecessary damage.

Clerk of the Court.

(5) The clerk of the municipality to whom notice of appeal is given shall be the clerk of the Court, and shall record the proceedings.

Judge to hear and determine within two months.

(6) It shall be the duty of the judge to hear and determine the appeal or appeals within two months after receiving notice thereof from the clerk of the municipality as hereinafter provided.

Powers of judge on appeal.

(7) The judge on appeal may set aside, alter or affirm the award and correct any errors therein; he may examine parties and witnesses on oath, and may inspect the premises and may require the engineer to accompany him; and should the award be affirmed or altered, the costs of the appeal shall be in his own discretion, but if set aside he shall have power to provide for the payment of the costs in the award mentioned, and also the costs of appeal, and may order the payment thereof by the parties to the award, or any of them, as to him may seem just, and may fix the amount of such costs.

Depriving engineer of, when guilty of misconduct.

(8) In case the judge on an appeal finds that the engineer has through partiality, or from some other improper motive, knowingly and wilfully favored unduly any one or more of the parties to the proceedings he may direct that the engineer be deprived of all fees in respect of the award, or of such part thereof as the judge may deem proper. But such order shall not deprive any party to the proceedings of any remedy he may otherwise have against the engineer.

Fees and disbursements of judge.

(9) The judge shall be entitled to charge for holding Court for the trial of appeals under this Act, and for the inspection of the premises, the sum of five dollars a day, which charge shall be considered part of the costs of appeal under the provisions of the next preceding sub-section.

Enforcement of award as amended.

(10) The award as so altered or affirmed shall be certified by the clerk together with the costs ordered, and by whom to be paid, and shall be enforced in the same manner as the award of the engineer, and the time for the performance of its requirements shall be computed from the date of such judgment in appeal; and the clerk shall immediately after the hearing send by registered letter, to the clerk of any other municipality in which lands affected by the ditch are situate, a certified copy of the changes made in the award by the judge, which copy shall be filed with the award, and each clerk shall forthwith by registered letter notify every owner within his municipality of any change made by the judge in the portion of work and material assigned to such owner.

The notice of appeal is to be served within fifteen clear days from the filing of the award by service on the clerk of the municipality of notice in writing of the appellant's intention to appeal. The clerk of the municipality is now to forward the notice to the judge, and the clerk of the Division Court will not have anything to do with the appeal.

331. Immediately upon the receipt of the Judge's order fixing the time and place of hearing the appeal, the Clerk shall notify the engineer and all parties interested, in the manner provided in *The Ditches and Watercourses Act* for the service of notices.

This and the following rules will, by reason of the change in procedure prescribed by the Act of 1894, be now inapplicable and beyond the powers of the Board of County Judges. The judge may, by virtue of 53 Vict., c. 67, in case he inspects the premises, fix the amount of his own expenses, and the same will then, under section 27 of the Act of 1894, be payable by the municipality, and may be placed, together with an addition of 7 per cent., upon the collector's roll as a charge against the lands, to be collected in the same manner as taxes. The forms 240, 241, 242, and 243 will be found useful by appellants, judges, and clerks of municipalities in appeals under the Act of 1894. Section 26 of the Act of 1894 confers upon the clerk of the municipality like powers as the clerk of the Division Court has to issue a subpœna to witnesses, and provides that the scale of fees allowed to witnesses in an action in the Division Court shall be applicable to appeals under the Act.

332. If the time and place of hearing is at a sitting of the Division Court, the Clerk shall enter the matter on the Judge's list of causes for trial at such sitting, and at the foot of such list, unless the Judge shall otherwise order.

333. The Clerk may issue, under the seal of the Court, subpœnas to witnesses, and the Bailiff may serve the same. Such subpœnas shall be in the form, as nearly as may be, of those used in suits in the Division Courts.

334. The Clerk and Bailiff shall, respectively, be entitled to receive for services the like fees as in suits in the Court, and the same, and necessary disbursements shall be paid to the Clerk before any proceeding is taken.

335. Rule No. 138 of these rules, as to preparation of special judgment, shall be applicable to matters under *The Ditches and Watercourses Act.*

336. After the Judge has finally determined the appeal and made his order, the Clerk shall certify to the Clerk of the municipality the said order, and the award

Rules 336-338

as altered or confirmed, together with the costs, if any, allowed, and by whom to be paid.

337. In case a sum of money has been paid by the appellant to the Clerk as an indemnity against the costs of the appeal, such Clerk shall hold the same, subject to the Judge's direction.

338. The Forms Nos. 240 to 243, inclusive, shall be used and applied in proceedings on appeals to the Judge of the County Court, under *The Act respecting Ditches and Watercourses.* (R.S.O., cap. 220, and amendments thereto.) Where necessary the forms can be varied so as to suit the particular case.

DIVISION COURT FORMS

TARIFF.

Form 1

The tariff prescribes all that the clerk or bailiff has any right to take: Dartnell v. Quarter Sessions of Prescott and Russell, 26 U.C.R. 430. No judge can allow more than the tariff prescribes: section 304. If the work provided for by the tariff is not done, no fees can be allowed therefor.

In Ross v. McLay, 26 C.P. 199, Sir Thomas Galt said: "It is sufficient to say that he (the clerk) has charged the plaintiff for services which he did not render, and therefore the charges must be disallowed." The amount provided for by the tariff cannot be exceeded in any case: *Re* Totten, 8 P.R. 386.

Item 7 of the old tariff was "Entering and noting every defence or notice of admission in procedure book, 25 cents." No fee will hereafter be chargeable for this service.

CLERK'S FEES.

1. Receiving claim, numbering and entering in procedure book..... $0 15

(This item to apply to entering in the procedure book a transcript of judgment from another court, but not an entry made for the issue of a judgment summons.)

2. Issuing summons, with necessary notices and warnings thereon, or judgment summons (as provided in the forms), in all:

Where claim	does not exceed $20	40
"	exceeds $20 and does not exceed $60	50
"	exceeds $60 and does not exceed $100	60
"	exceeds $100	1 00

(N.B.—In replevin and interpleader suits the value of goods to regulate the fee.)

3. Copy of summons, including all notices and warnings thereon..... 25

The charge for copy of summons was formerly 20 cents.

4. Copy of claim (including particulars), when not furnished by plaintiff..... 25

The charge for copy of claim was formerly 20 cents, and was to be paid by the plaintiff. It is now costs in the cause.

5. Copy of set-off or counterclaim (including particulars), when not furnished by the defendant..... 25

(Note.—In either or the last two preceding items, the fees may be taxed against the party ordered to pay costs.)

The charge for copy of set-off or counterclaim was formerly 20 cents, and was to be paid by the defendant. It is now costs in the cause.

6. Receiving and entering bailiff's return to any summons, writ, or warrant issued under the seal of the court (except summons to witness and return to summons or papers from another division) 15

7. Taking confession of judgment..... $0 10
(This does not include affidavit and oath, chargeable under item 8.)

8. Every necessary affidavit, if actually prepared by the clerk, and administering oath to the deponent..... 25

9. Furnishing duly certified copies of the summons and notices and papers, with all proceedings for purposes of appeal (under section 151), as required by either party, per folio of 100 words..... 05
This did not occur in the old tariff.

10. Certificate therewith..... 25
This did not occur in the old tariff.

11. Certifying under the seal of the court and delivering to a judgment creditor a memorandum of the amount of judgment and costs against a judgment debtor, under The Creditors' Relief Act, or for any other purpose..... 25
This did not occur in the old tariff.

12. Copies of papers for which no fee is otherwise provided, necessarily required for service or transmission to the judge, each..... 10
If exceeding two folios, per folio..... 05
The provision for an increased charge where the copies exceed two folios is new.

13. Every notice of defence or admission entered, or other notice required to be given by the clerk to any party to a cause or proceeding, including mailing, but not postages..... 15
The words "but not postages" are new.

14. Entering final judgment by clerk, on special summons, where claim not disputed..... 50

15. Entering every judgment rendered at the hearing, or final order made by the judge.....
(Note.—This fee does not apply to any proceeding on judgment summons.)
(This one fee of 50 cents will include the service of recording at the trial, and afterwards entering in the procedure book the judgment, decree, and order in its entirety, rendered or made at the trial. If a garnishee proceeding before a judgment, the fee of 50 cents will be allowed for the judgment in respect to the primary debtor, and a like fee of 50 cents for the adjudication, whenever made, in respect to the garnishee.)

16. Subpœna to witness..... 25
(This subpœna may include any number of names therein, and only one original subpœna shall be taxed, unless the judge otherwise orders.)
The amount was formerly 15 cents.

17. For every copy of subpœna required for service..... ..... $0 05

The words "including final order on judgment debtor's examination" are new.

18. Summons for jury (including copy for each juryman), when required by the parties..... ..... 1 25

The clerk was formerly allowed 10 cents for each summons.

19. Calling and returning jury ordered by the judge..... 25

20. Every order of reference or order for adjournment made at hearing, and every order requiring the signature of the judge, and entering the same, including final order on judgment debtor's examination... 25

(Any warning necessary with order; *e.g.*, the warning in form 73 forms part of the order.)

21. Transcript of judgment to another Division Court 25

The words "to another Division Court" are new.

22. Transcript of judgment to the County Court..... 50

Transcripts to County Courts are abolished by 57 Vict., c. 23, s. 8.

23. Every writ of execution, warrant of attachment, or warrant of commitment and delivering same to bailiff..... 50

24. Renewal of every writ of execution, when ordered by the judgment creditor, or of warrant of commitment, when ordered by the judge..... 15

The words "or of warrant of commitment when ordered by the judge" are new.

25. Every bond, when necessary, and prepared by the clerk (including affidavits of justification and of execution)..... .... 1 00

The words "and of execution" are new. The item was formerly 50 cents.

26. For necessary entries in the debt attachment book, in each case (in all)..... 20

27. Transmitting transcript of judgment; or transmitting papers for service to another division, or to the judge, on application to him, including necessary entries and mailing, but not including postages..... 25

28. Receiving papers from another division for service, entering the same, handing to the bailiff, receiving and entering his return, and transmitting the same (if return made promptly, not otherwise) 30

29. Search, by person, not party to the suit or proceeding, to be paid by the applicant..... 10

Search, by party to the suit or proceeding, where the suit or proceeding is over one year old $0 10

(No fee is chargeable for search to a party to the suit or proceeding, if the same is not over one year old.)

30. Taxing costs in defended suits after judgment pronounced 25

The words "after judgment pronounced" are new.

31. Making out statement of costs in detail (including bailiff's fees) at the request of any party, or for purpose of settlement, or upon entering judgment by default 10

(Neither item 30 or 31 applies to statement of costs endorsed on summons or copy to be served.)

This item is new. Old rule 175, however, provided a fee of 5 cents for a statement in detail required by any party on paying costs.

32. Taxing bailiff's costs under section 7 of The Division Courts Act, 1889 25

This item is new. It refers to the taxation of bailiff's fees when goods are taken out of his hands by a sheriff under The Creditors' Relief Act: *see* section 212*b*, vol. 1, p. 303.

33. Copying and transmitting to municipal clerk judge's decision in appeal 50

This refers to appeals under The Line Fences Act: *see* rule 327.

Form 2 BAILIFF'S FEES.

1. Service of summons issued under the seal of the court, or judge's summons or order, on each person (except summons to witness and summons to juryman):

Where claim does not exceed $20 ..... $0 30
" exceeds $20 and does not exceed $60 40
" exceeds $60 and does not exceed $100 50
" exceeds $100 75

(In interpleader suits the value of the goods to regulate the fee.)

The item formerly read, "Service of summons, writ, or warrant," etc. The words "writ or warrant" have been expunged.

2. For every return as to service under item 1; attending at the clerk's office and making the necessary affidavit (as provided by rule 90) 15

A fee for return would not be allowable unless service had been effected.

3. Service of summons on witness or juryman, or service of notice ... 15

4. Taking confession of judgment and attending to prove 10

5. For calling parties and their witnesses at the sittings of the court in every defended case, and at the hearing of every judgment summons..... $0 15

The words "and at the hearing of every judgment summons" are new.

6. Enforcing every writ of execution, or summons in replevin, or warrant of attachment, or warrant against the body, each:

Where claim does not exceeds $20 50

" exceeds $20 and does no. exceed $60..... 75

" exceeds $60..... 1 00

(When goods replevied the value of the goods to regulate the amount of the fee.) *This fee does not include service of summons in replevin on defendant.*

Fees under Creditors' Relief Act (see section 7 of 52 Vict., c. 12, and section 25 of R.S.O., c. 65) shall be taxed according to this tariff.

The words in italics are new.

7. Every mile necessarily travelled to serve summons, or process or other necessary papers, or in going to *replevy goods*, or to seize on attachment, or in going to seize on a writ of execution, where money *paid on demand*, or *made on execution*, or case settled after *seizure*..... 12

The words in italics are new. The former item also contained the following clause: "In no case is mileage to be allowed for a greater distance than from the clerk's office to the place of service or seizure." Rule 298 entitles a bailiff to mileage where a creditor has insisted upon the bailiff making an attempt to find property, and a proper endeavor has been made by the bailiff after deposit of his fees has been made by the creditor. No assistant of the bailiff would be entitled to maintain an action or proceeding for such fees: Smith v. Broadbent, (1892) 1 Q.B. 551. No mileage is allowable for any unsuccessful attempt to serve a summons or other paper, or for an unsuccessful attempt to replevy goods; rule 290 not extending to these cases. Mileage must in all cases be computed by the nearest travelled road to the place where service is effected: Martin v. Corporation of Haldimand, 19 U.C.R. 178; Myers v. London & S.W. Ry. Co., L.R. 5 C.P. 1. If two papers should be served upon the same defendant *in different suits*, mileage would be chargeable on each. If three defendants in the same suit should live near one another, and should all be served on one journey, only the mileage to the place where the one farthest away was served would be allowable: *Re* Davidson and Chairman Quarter Sessions of Waterloo, 24 U.C.R. 66.

8. Mileage going to arrest under a warrant, when arrest made, per mile..... 12

Item 8 formerly read: "Mileage to arrest delinquent under a warrant to be at 12 cents per mile; but for carrying delinquent to prison, including all expenses and assistant, per mile 20 cents."

9. Mileage carrying delinquent to prison, including all expenses and assistance, per mile .....

See note to item 8.

10. Every schedule of property seized, attached or replevied, including affidavit of appraisal, when necessary:

Not exceeding $20	30
Exceeding $20 and not exceeding $60	50
Exceeding $60	75

11. Every bond, when necessary, when prepared by the bailiff, including affidavits of justification and of execution..... 50

12. Every notice of sale, not exceeding three, under execution or under attachment, each 15

13. Reasonable allowances and disbursements, necessarily incurred in the care and removal of property:

(*a*) If a bailiff removes property seized, he is entitled to the necessary disbursements in addition to the fees for seizure and mileage.

(*b*) If he takes a bond, then to 50 cents, instead of disbursements, for removal of property.

(*c*) If assistance is necessary in the seizure, or securing, or removal, or retaining of property, the bailiff is entitled to the disbursements for such assistance.

(*d*) All charges for disbursements are to be submitted to the clerk for taxation, subject to appeal to the judge.

(*e*) The bailiff must in all cases endorse a memorandum of all his charges on the back of the execution, or state them on a separate slip of paper, so that the clerk may conveniently tax the bailiff's charges for fees and disbursements.

(*f*) The clerk is in all cases to sign the memorandum of his taxation and preserve it among the papers in the cause, together with the execution, for future reference, and thereby enable the clerk to certify the bailiff's returns properly.

Formerly the item read: "There shall be allowed to the bailiff for removing or retaining property seized under execution or attached reasonable and necessary disbursements and allowances to be first settled by the clerk, subject to appeal to the judge." It seems that the fees authorized by this rule could not be collected where the goods seized or attached were not the property of the debtor: Newman v. Merriman, 26 L.T.N.S. 397. In the English County Court the expenses might, in the discretion of the judge, be allowed to the bailiff: Thomas v. Peek, 20 Q.B.D., p. 727; but the special provisions under which such expenses may be allowed in England do not appear to have been re-enacted here.

14. If execution, or process in attachment in the nature of execution be satisfied, in whole or in part, after seizure and before sale,

whether by action of the parties or otherwise, the bailiff shall be entitled to charge and receive 3 per cent. on the amount directed to be levied, or on the amount of the value of the property seized, whichever shall be the lesser amount.

Formerly the item read: "There shall be allowed to the bailiff five per cent. upon the amount realized from the sale of property under any execution, but such percentage not to apply to any overplus thereon."

(But if execution be satisfied in whole or in part after seizure and before sale, the bailiff to be entitled to charge and receive three per cent. on the amount realized.)

Compare C.R. 1233, as amended by C.R. 1375. It is only where the execution is "satisfied" in whole or in part that the allowance of three per cent. in lieu of poundage can be allowed. On an assignment for the benefit of creditors, the execution could not be said to be satisfied. It is superseded. And it would seem that the percentage could not be allowed. If the goods are handed over to a sheriff under The Creditors' Relief Act (*see* vol. 1, p. 230), it would also seem that the costs and disbursements of the bailiff would not include the percentage, as the sheriff would be entitled under section 28 of that Act to poundage: *see* R. v. Ludmore, 13 Q.B.D. 415. In Smith v. Antipitzky, 10 C.L.T. 368, a sheriff who delivered goods to an assignee for the benefit of creditors was held to be entitled to poundage under C.R. 1233; but it would seem that that case is, in consequence of the amendment made by C.R. 1375, no longer an authority.

By 52 Vict., c. 12, s. 2, the bailiff has a lien for his fees where the action is settled or an assignment for the general benefit of creditors is made: *see* section 56*z*, vol. 1, pp. 46 and 47.

15. Poundage on executions, and on attachments in the nature of executions, 5 per cent., exclusive of mileage for going to seize and sell, upon the amount realized from property necessarily sold.

The property must be necessarily sold.

Form 3 FEES TO WITNESSES AND APPRAISERS.

Allowance to Witnesses.

Attendance, *per diem*, to witnesses residing within 3 miles of the place where the court is held, if within the county	$0 75
And if without the county	1 00
Attendance, if witness resides over 3 miles from the place of sittings, and within the county, *per diem*	1 00
Attendance, if witness resides without county and more than 3 miles from the place of sittings, *per diem*	1 25
Barristers and solicitors, physicians and surgeons, engineers and veterinary surgeons, other than parties to the cause, when called upon to give evidence of any professional service rendered by them, or to give professional opinions, *per diem*.	4 00

(Note.—Disbursements to surveyors, architects and professional witnesses, such as are entitled to specific fees by statute, are to be taxed, as authorized by such statute.)

If witnesses attend in one case only, they will be entitled to the full allowance.

If they attend in more than one case, they will be entitled to a proportionate part in each cause only.

The travelling expenses of witnesses, over three miles, shall be allowed according to the sums reasonably and actually paid, but in no case shall exceed twenty cents per mile, one way.

Professional Witnesses.—The increased fees for professional witnesses can only be allowed on a certificate from the judge: *see* 57 Vict., c. 25; *see* note to rule 291. Such fees may now be allowed to witnesses, not parties to the cause, although resident within the county.

Section 134, vol. 1, p. 194, may now be considered not in force.

FEES TO APPRAISERS.

Fees of Appraisers of Goods, etc., Seized under Warrant of Attachment.

To each appraiser, 50 cents, per day, during the time actually employed in appraising goods, to be paid in the first instance by plaintiff, and allowed in the costs of the cause.

FEES IN SUITS UNDER $10.

(57 Vict., c. 23, s. 11.)

Clerk.

For all services, from entering action, or suing out a judgment or interpleader summons, up to and including the entering of final judgment, or final order on any such judgment, or interpleader summons, in case the action proceeds to judgment or final order $1 25

In case the action does not proceed to judgment or final order, the fees heretofore or that may hereafter be payable, but not exceeding in the whole the said sum.

For issuing writ of execution, warrant of attachment, or warrant for arrest of delinquent, and entering the return thereto. 50

Bailiff.

For all services rendered in serving summons and making return, and any other service that may be necessary, before judgment is entered by the clerk or pronounced by the judge, mileage excepted. 40

For enforcing execution, schedule of property seized or attached, bond, where necessary, and all other necessary acts done by him, after seizure, mileage excepted, if money made, or case settled after levy 1 00

(Necessary disbursements incurred in the care and removal of property shall be allowed, to be first allowed by the clerk, subject to the approval of the judge.)

IOWA UNIVERSITY LAW LIBRARY

No.	Style of Cause.	Date of application for proceedings and amount of deposit.	Nature of proceedings and amount	Nature of process, when issued, and to whom.	Date of return, when and how served, and number of miles travelled.	Defence—date of filing, and by whom.	Subpœnas.	Jury.
1 J. McKenzie...	James McKenzie, of St. Thomas, *vs.* John Elliott, of St. Thomas.	January 2, 1894 $3.00	Contract, original note, $50.00.	Special summons to bailiff, Jan. 2, 1894.	January 6, 1894, defendant personally on 5th inst., 5 miles.	January 16, 1894 Notice of no defence mailed plaintiff.	.....	.....
2 Robinson and Macdonald..	George Murray, of St. Thomas, *vs.* Charles McGregor, of Yarmouth.	January 2, 1894 $3.00	Contract, itemized account, $63.00.	Special summons to bailiff, Jan. 2, 1894.	January 6, 1894, defendant personally on 5th inst., 2 miles.	January 8, 1894, defence filed for defendant by McLean, McLean & Cameron. Notice mailed Robinson & McDonald.	To plaintiff 1 and 3 copies paid. Jan. 19, 1894, to defendant 1 and 4 copies charged.	January 8, 1 jury dema by defend solicitors. Jan. 9th, 1 jury sum issued.
3 Maxwell and Harvey.....	Thomas Clark, of St. Thomas. *vs.* Henry Meadows, of St. Thomas,	January 2, 1894 $3.00	Tort, Damages $30.00.	Ordinary summons to bailiff, Jan. 2, 1894.	January 8, 1894, defendant personally on 6th inst., 1 mile.	January 7, 1894, defence filed by A. Grant. Notice mailed Maxwell & Harvey.	January 20, to plaintiff 1 and 3 copies paid to defendant. Jan. 22, 1894, 1 and 4 copies paid.	.....
4 V. McCrimmon	James Munroe, of St. Thomas, Primary Creditor, *vs.* John Sutherland, of London, Primary Debtor, and Alexander Smith, of St. Thomas, Garnishee.	January 2, 1894 $3.00	Contract, itemized account, $42.00.	Garnishee summons to bailiff and to J. W. McIntosh, 1st D. C. Middlesex, January 2, 1894.	January 15, 1894 Pr. Dr., personally, on 5th inst., 1 mile, and Gar. personally, on 3rd inst., 1 mile.	.....	.....	.....
5 J. Bancroft	Joel Bancroft, of Yarmouth, *vs.* Daniel Brown, of St. Thomas.	January 2, 1894 $3.00	Replevin ten sheep. Value $50.00.	January 2, 1894, replevin summons to bailiff.	January 13, 1894, property replevied and summonses served Jan. 3, 1894, 1 mile.	January 6, 1894, defence filed by W. G. Doherty. Notice mailed plaintiff.	January 28, 1894. To plaintiff 1 and 3 copies paid. To defendant 1 and 2 copies paid.	.....

OK OF THE DIVISION COURT IN THE

ENSUING SITTINGS AT ST. THOMAS, THE 31st DAY OF JANUARY, 1894.

Subpœnas.	Jury.	Bailiff.		Clerk.		Witness fees.	Jury fund.	Total.	Date.		Judgment or Order.	Execution or other process	
									Day.	Month.		Dat	Nature.
			$ c.		$ c.	$ c.		$ c.					
		Ser.....	40	R.C.....	15	.....	.03	3 14	18th	January	The defendant having been served with special summons and particulars of claim, and not disputing same, it is adjudged that plaintiff recover $50.00 for debt and $3.14 for costs.	18th Ja	Judgment .....
		A.R.P...	15	Sum.....	30								Subsequent costs ....
		Mi	60	Copy	30								Interest.....
				Aff.....	15								
				Ret.....	15								Execution, H. Thornt
				Not.....	15								
				Post.....	06								
				Jud.....	50								
				Ex.....	50								
				Ret.....	15								
				Post.....	06								
plaintiff 1 and 3 copies paid.	January 8, 1894, jury demanded by defendant's solicitors.	Ser.....	50	R.C.....	15	2 25	.06	10 45	31st	January	Cause tried. Judgment on verdict of the jury for $50.00 and costs in full discharge of his cause of action set forth in his claim.	.....	.....
Jan. 19, 1894, to defendant 1 and 4 copies charged.		A.R.P...	15	Sum.....	60								
		Mi	24	Copy	20								
		J. ser....	1 80	Aff.....	25								
	Jan. 9th, 1894, jury summons issued.	J. ret	15	Ret.....	15								
		Mi	1 44	Def. paid.									
		Call.....	15	T.C.....	25								
				Not. & P.	25								
				J. sum...	1 21								
				Subp. pd.	20								
				Subp	30								
				Jud.....	35								
					50								
nuary 20, to plaintiff 1 and 3 copies paid to defendant.	.....	Ser.....	40	R.C.....	15	4 00	.03	7 36	31st	January	Cause tried. Judgment for the plaintiff for $18.00 and costs to be paid in 15 days.	.....	.....
		A.R.P...	15	Sum.....	50								
		Mi	12	Copy	20								
		Call.....	15	Aff.....	25								
Jan. 22, 1894, 1 and 4 copies paid.				Ret.....	15								
				Def. pd..	25								
				T.C.....	25								
				Not	21								
				Subp. pd.	30								
				Subp. pd.	35								
				Jud.....	50								
.....	.....	Ser.....	80	F.C.....	15	.....	.03	5 30	31st	January	On hearing all parties it is adjudged that the primary debtor is indebted to the primary creditor in $42 besides costs, and it is also adjudged that the garnishee is indebted to the primary debtor in $50, which to the extent of the two first named sums is to be applied in satisfaction thereof, and that the garnishee pay the same in 15 days.	.....	.....
		A.R.P...	30	Sum.....	50								
		Mi	24	Copy	40								
		Call.....	15	Aff.....	25								
				D.A.B	20								
				Trans....	25								
				Clerk ...	35								
				Post.....	16								
				Rets.....	30								
				Jud	1 00								
				Post.....	02								
uary 28, 1894. To plaintiff 1 and 3 copies paid. To defendant 1 and copies paid.	.....	Ser.....	40	R.C.....	15	3 00	.03	6 43	31st	January	Judgment for the plaintiff for $20 damages and costs.	2r	Judgment... .....
		A.R.P...	15	Sum.....	50								Costs .....
		Mi	12	Copy	20								Subsequent costs .....
				Aff.....	25								Interest.....
				Ret	15								
				Jud	50								Execution.....
				Ex.....	50								
				Ret	15								
				Post.....	08								
				T.C.....	25								

Nature proceedings and amount	Nature of process, when issued, and to whom.	Date of return, when and how served, and number of miles travelled.	Defence—date of filing, and by whom.	Subpœnas.	Jury.	Bailiff.	Clerk.	Witness fees.	Jury fund.	Total.	Date.	
											Day.	Mo
ract, original e, $50.00.	Special summons to bailiff, Jan. 2, 1894.	January 6, 1894, defendant personally on 5th inst., 5 miles.	January 16, 1894 Notice of no defence mailed plaintiff.	.....	.....	$ c. Ser..... 40 A.R.P... 15 Mi 60	$ c. R.C..... 15 Sum..... 50 Copy .... 20 Aff..... 25 Ret..... 15 Not..... 15 Post..... 06 Jud..... 50 Ex..... 50 Ret..... 15 Post..... 06	$ c.	.03	$ c. 3 14	18th	Ja
act, itemized unt, $63.00.	Special summons to bailiff, Jan. 2, 1894.	January 6, 1894, defendant personally on 5th inst., 2 miles.	January 8, 1894, defence filed for defendant by McLean, McLean & Cameron. Notice mailed Robinson & McDonald.	To plaintiff 1 and 3 copies paid. Jan. 19, 1894, to defendant 1 and 4 copies charged.	January 8, 1894, jury demanded by defendant's solicitors. Jan. 9th, 1894, jury summons issued.	Ser..... 50 A.R.P... 15 Mi ..... 24 J. ser.... 1 80 J. ret .... 15 Mi ..... 1 44 Call..... 15	R.C..... 15 Sum..... 60 Copy .... 20 Aff..... 25 Ret..... 15 Def. paid. 25 T.C..... 25 Not. & P. 21 J. sum... 1 20 Subp. pd. 30 Subp..... 35 Jud..... 50	2 25	.06	10 45	31st	Ja
t. Damages 30.00.	Ordinary summons to bailiff, Jan. 2, 1894.	January 8, 1894, defendant personally on 6th inst., 1 mile.	January 7, 1894, defence filed by A. Grant. Notice mailed Maxwell & Harvey.	January 20, to plaintiff 1 and 3 copies paid to defendant. Jan. 22, 1894, 1 and 4 copies paid.	.....	Ser..... 40 A.R.P... 15 Mi ..... 12 Call..... 15	R.C..... 15 Sum..... 50 Copy .... 20 Aff..... 25 Ret..... 15 Def. pd.. 25 T.C..... 25 Not ..... 21 Subp. pd. 30 Subp. pd. 35 Jud..... 50	4 00	.03	7 36	31st	Ja
tract, itemized count, $42.00.	Garnishee summons to bailiff and to J. W. McIntosh, 1st D.C. Middlesex, January 2, 1894.	January 15, 1894 Pr. Dr., personally, on 5th inst., 1 mile, and Gar. personally, on 3rd inst., 1 mile.	.....	.....	.....	Ser..... 80 A.R.P... 30 Mi ..... 24 Call 15	R.C..... 15 Sum..... 50 Copy .... 40 Aff ..... 25 D.A.B. 20 Trans.... 25 Clerk ... 35 Post..... 16 Rets..... 30 Jud ..... 1 00 Post..... 02	.....	.03	5 30	31st	Ja
levin ten eep. Value 50.00.	January 2, 1894. replevin summons to bailiff.	January 13, 1894, property replevied and summonses served Jan. 3, 1894, 1 mile.	January 6, 1894, defence filed by W. G. Doherty. Notice mailed plaintiff.	January 28, 1894. To plaintiff 1 and 3 copies paid. To defendant 1 and 2 copies paid.	.....	Ser..... 40 A.R.P... 15 Mi..... 12	R.C..... 15 Sum..... 50 Copy .... 20 Aff..... 25 Ret ..... 15 Jud ..... 50 Ex..... 50 Ret ..... 15 Post..... 08 T.C..... 25	3 00	.03	6 43	31st	Ja

Total.	Date. Day.	Date. Month.	Judgment or Order.	Execution or other process issued. Dat	Nature.	Amount.	How proceeds of moneys received. Date.	Disposed of.	Amount
$ c.						$ c.			$ c.
3 14	18th	January	The defendant having been served with special summons and particulars of claim, and not disputing same, it is adjudged that plaintiff recover $50.00 for debt and $3.14 for costs.	18th Ja·	Judgment	53 14	18th February.	H. Thornton	57 57
					Subsequent costs	71		Paid bailiff's fees	3 46
					Interest	26			
					Execution, H. Thornton	54 11		Balance	54 11
								See cash book.	
10 45	31st	January	Cause tried. Judgment on verdict of the jury for $50.00 and costs in full discharge of his cause of action set forth in his claim.				2nd February.	McLean, McLean & Cameron paid into court for defendant	60 45
								See cash book.	
7 36	31st	January	Cause tried. Judgment for the plaintiff for $18.00 and costs to be paid in 15 days.				3rd February.	A. Grant paid into court for defendant	25 36
5 30	31st	January	On hearing all parties it is adjudged that the primary debtor is indebted to the primary creditor in $42 besides costs, and it is also adjudged that the garnishee is indebted to the primary debtor in $50, which to the extent of the two first named sums is to be applied in satisfaction thereof, and that the garnishee pay the same in 15 days.				16th February.	Alexander Smith, garnishee, paid into court	47 30
								See cash book.	
6 43	31st	January	Judgment for the plaintiff for $20 damages and costs.	2f·	Judgment	20 00	20th February.	H. Thornton	29 56
					Costs	5 70		Paid bailiff's fees	3 60
					Subsequent costs	73			26 56
					Interest	13			
					Execution	56 56		See cash book.	

5. FORM OF DEBT ATTACHMENT BOOK.

Name of Primary Creditor or Plaintiff.	Name of Primary Debtor or Defendant.	Date of judgment, if claim a judgment.	Amount unsatisfied, if claim a judgment.	Amount found due from Primary Debtor to Primary Creditor, when claim not a judgment.	Name of Garnishee.	Date of attaching order or garnishee summons.	Date of service of attaching order or garnishee summons.	Amount adjudged against garnishee.

13

CORNELL UNIVERSITY LAW LIBRARY

6. CASH

RECEIPTS.

Suitors' money paid into the Division Court in the County of for the commencing 189 .

When received, A D. 1893.	Style of Cause.	No. of Suit and Year.	From whom received.	When paid out by the Clerk.	Signature of person to whom paid.	Amount. $ c.
April 1...	Bird *v.* Fish	100,1893	Bleff.....	April 2..	James Bird....	94 48

BOOK.

EXPENDITURES.

Suitors' money paid out of the Division Court in the County of for the commencing 189 .

When paid out.	Style of Cause.	No. of Suit and Year.	To whom paid or how remitted.	Amount
April 2.....	Bird *v.* Fish	100, 1893...	Plaintiff	$94 48

TORONTO PUBLIC LAW LIBRARY

7. CLERK'S FEE BOOK.

From to 189 .

FEE.	Rate.	Monday.		Tuesday.		Wednesday.		Thursday.		Friday.		Saturday.		Aggregate.	
		No.	Amount.	No	Amount.	No	Amount.	No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.
	$ cts.		$ cts.		$ cts		$ cts		$ cts.		$ cts.		$ cts.		$ cts.
1. Receiving Claim, etc.....	15														
2. Issuing Summons	40 50 60 1 00														
3. Copy of Summons.....	25														
4. Copy of Claim	25														
5. Copy of Set-off, etc.....	25														
6. Receiving and entering Bailiff's return	15														
7. Taking confession of judgment....	10														
8. Every necessary Affidavit.....	25														
9. Furnishing copies under section 151, per folio.....	5														
10. Certificate therewith.....	25														
11. Certifying under Creditors' Relief Act or other purpose.....	25														
12. Copies of papers...	10														
If exceeding 2 folios, per folio..	5														
13. Every notice required to be given by Clerk.....	15														
14. Entering final judgment by Clerk.	50														
15. Entering every judgment rendered	50														

| | | |

8. INDEX. FORM OF JUDGMENT DEBTORS' BOOK.

Name of Debtor. (Surname first.)	Date when the Examination took place.	Number and the style of the Cause in which he was examined.
Brown, Henry.....	16th January, 1893.	306, 1891, Hibbert *v.* Brown.
Brawberg, Joseph.....	4th March, 1893.	39, 1891, Filchett *v.* Brawberg.
Benson, Patrick	16th February 1893.	41, 1893, Platt *v.* Benson.

9. FORM OF ORDER BOOK.

Date, 189 .	(If Cause existing or Judgment signed.) Style of Cause.	Process of proceeding to be issued or taken.	Signature of Party or Solicitor.
Jan. 12th, 1893.	Smith *v.* Jones, No. 76, '93.	Issue execution.	H. Smith.
Feb. 6th, "	Henry *v.* Jeffrey, " 17, "	Issue subpœna.	B. Henry.
" 9th, "	Jackson *v.* Jones, " 29, "	Enter judgment.	B. Bell, Soli.
" 10th, "	Peter *v.* Bray, " 14, "	Issue alias ex'n.	Geo. James, Agent.

10. FORM OF FOREIGN SUMMONS BOOK.

1 Date of receiving 18—	2 Court and Style of Cause.	3 Year No.	4 Name of Clerk from whom rec'd.	5 Date when handed to Bailiff.	6 Date when returned by Bailiff.	7 Date when transmitted to Home Office.	8 Bailiff's fees thereon.	9 Clerk's fees thereon.	Total fees.	Remarks.

TORONTO UNIVERSITY LAW LIBRARY

11. FORM OF BAILIFF'S PROCESS BOOK, UNDER RULE 185.

Process Book of George Smyth, Bailiff of the 6th Division Court in the County of Elgin, made in pursuance of the Rule of Practice touching all Warrants, Precepts and Writs of Execution, acted on, or in hand, between the day of 18 , and the day of 18 .

Number of the Court whence the Process issued.	Number of the Cause.	Style of Cause.		Nature of the Process.	When Received.		Amount to be made.	Amount Levied.	When Levied.		Amount of Bailiff's charges.	Amount paid to Clerk.	When paid.		Clerk's surname or signature to whom amount paid.	Remarks
		Plaintiff.	Defendant.		Month.	Day.			Month.	Day.			Month.	Day.		

12. BAILIFF'S FEE BOOK, DIVISION COURT COUNT OF

Fee.	Rate.	Monday.		Tuesday.		Wednesday.		Thursday.		Friday.		Saturday.		Total for the week.	
		Number.	Amount	Number.	Amount	Number.	Amount	Number.	Amount	Number.	Amount	Number.	Amount	Number.	Amount
	$ c.		$ c.		$ c.		$ c.		$ c.		$ c.		$ c.		$ c.
1. Service of summons, etc., at	30 40 50 75														
2. Every return, etc.	15														
3. Service of subpœna or summons on jurors	15														
4. Taking confession, etc	10														
5. Calling cause, etc	15														
6. Enforcing, etc., at	50 75 1 00														
7 and 8. Mileages at	12														
9. Mileages at	20														
10. Schedule, etc., at	30 50 75														
11. Bond, etc	50														
12. Notice of sale	15														
13. Allowances, etc	.....														
14. Percentage	%														
15. Poundage	5 %														

IOWA UNIVERSITY LAW LIBRARY

13. BAILIFF'S CASH BOOK.

Under Rule 189, showing all payments received by him of moneys on executions or otherwise, from defendants, garnishees or others, from the day of 18 .

Dr. Received.				Paid out.			Cr.
Date, 18 .	What suit.	From whom.	Amount.	Date, 18 .	On what suit.	To whom.	Amount.

14. Particulars of Claim and Defence, including Counterclaims.

Particulars in Cases of Contracts.

No. A.D., 18 .

A.....B...., of , claims of C.... D...., of , the sum of $, the amount of the following account, viz.:—

(*Here give the account in reasonable detail, stating dates, items, and sums.*)

Or, The amount of the note (a copy of which is underwritten), together with the interest thereon.

Or, For that the said C.... D.... promised (*here state shortly the promise*), which undertaking the said C.... D.... hath not performed.

Or, For that the said C.... D.... by deed, under his seal, dated the day of , A.D. 18 , covenanted to, etc., and that the said C.... D.... hath broken said covenant whereby the said A.... B.... hath sustained damages to the amount aforesaid.

Or, For money agreed by the said C.... D.... to be paid by the said A.... B...., together with a horse of the said C.... D.... in exchange for a horse of the said A.... B...., delivered by the said A.... B.... to the said C.... D....

Or, For that the said C.... D...., by warranting a horse to be then sound and quiet to ride, sold the said horse to the said A.... B...., yet the said horse was not then sound and quiet to ride.

Or, For that the said C.... D...., in consideration that the said A.... B.... would supply E.... F.... with goods on credit, promised the said A .... B.... that he, the said C.... D...., would be answerable to the said A.... B.... for the same to the extent and value of $75, that the said C.... D.... did accordingly supply the said E.... F.... with goods to the price of $59 and upwards:—

Or, Butcher's meat supplied to you, full particulars entered in your pass book from time to time, from 27th August, 1889, to 12th September, 1890. $24.75.

Or, Groceries supplied to you, full particulars in bills delivered weekly or monthly. (Dates as above.) $28.49.

Or, Goods supplied to you out of my store, full particulars in detailed accounts given to you with each purchase. $49.76.

(*a*) ON A GUARANTY.

A....B...., of , in the County of , claims against C.... D...., of , in the County of , as principal, and against E.... F...., of , in the County of , as surety (or guarantor), $100 for the price of goods sold by A.... B.... to C.... D....

The following are the particulars:—

Guaranty by E.... F.... of the price of *woollen* goods supplied to C.... D.... as follows:—

1889, Febr'y 2, To goods	$ 25 00
March 3, To goods.....	10 00
March 17, To goods.....	65 00
Total...	$100 00

(*b*) ON PROMISSORY NOTE AGAINST MAKER.

A.... B...., of , in the County of , claims against C.... D...., in the County of , as maker of a promissory note payable to E.... F.... or bearer (*or order, as the case may be*), of which plaintiff is the holder.

The following are the particulars:—

To promissory note, dated 1st January, 1890 (principal)..	$50 00
(interest) ..	3 39
Total.....	$53 39

(*c*) ON A PROMISSORY NOTE AGAINST MAKER AND ENDORSER.

Same form of commencement as (*a*), *ante*, against C.... D...., of , in the County of , as maker, and E.... F...., of , in the County of , as endorser, of a promissory note (here state particulars as in form (*b*), *ante*).

(*d*) ON A BILL OF EXCHANGE AGAINST ACCEPTOR AND DRAWER.

A.... B...., of , in the County of , claims against C.... D.. ., of , in the County of , as acceptor, and against E.... F...., of , in the County of , as drawer of a bill of exchange.

The following are the particulars:—

Bill of exchange for $75, dated 1st January, 1889, drawn by the said E.... F.... upon and accepted by the said C.... D...., payable three months after date.

Principal	$75 00
Interest	2 75
Total	$77 75

(*e*) ON A BILL OF EXCHANGE AGAINST ACCEPTOR.

A.... B...., of , claims of C.... D...., of , in the County of , as acceptor of a bill of exchange.

The following are the particulars:—

Bill of exchange, drawn by Amos Bentley, indorsed to plaintiff, accepted by you, due this day, 17th June, 1890, for	$29 00
17th December, to interest, six months	87
Total	$29 87

(*f*) ON A BOND.

A.... B...., of , in the County of , claims of C.... D...., of , in the County of , $79.40 for principal and interest due upon a bond due to A.... B....

The following are the particulars:—

Bond dated 1st January, 1889, condition for payment to A.... B...., of $70 on the 26th December, 1889.

Principal due	$70 00
Interest	9 40
Total	$79 40

(*g*) ON A COVENANT.

A.... B...., of , in the County of , (same as above form (*e*) substituting the word "covenant" for "bond") to A.... B....

The following are the particulars:—

Deed dated 26th January, 1889, covenant to pay $70 and interest to A.... B....

Principal due	$70 00
Interest	9 40
Total	$79 40

15 PARTICULARS OF PLAINTIFF'S CLAIM IN ACTIONS OF TORT.

A.... B...., of , claims from C.... D...., of , $60 for damages. For that the said A.... B.... has suffered damages from personal injuries to the said A.... B...., and damages to his carriage and harness, caused by the said C.... D.... (*or* his servant) on the 15th January, 1892, negligently driving a wagon and horse on Talbot Street, Southwold.

Particulars of Expenses.

Charges of Dr. VanBuskirk, surgeon.....	$25 00
Charges of Mr Jones, carriage-maker.....	10 00
Charges of Robert McCully, harness-maker.....	5 00
	$40 00
Personal injuries.....	20 00
The said A.... B.... claims..	$60 00

Or, *For that the said C....D....deprived the plaintiff of and converted to his own use the following goods of his, viz. :—

Sept. 10, 1889—One table cloth.....	$ 3 00
One piano.....	50 00
A lot of chairs.....	7 00
Total.....	$60 00

Or, *For illegally distraining his goods at No. 67 Charles Street, Toronto.

Or, *For illegally arresting and imprisoning him at Colborne Street, Brantford.

Or, *For that the said C.... D.... did on or about the day of , A.D. 189 , at the Township of , unlawfully [break and injure a wagon of the said A.... B....] *or* [falsely represent L.... O.... as fit to be trusted, the said C.... D.... at the same time knowing that the said L.... O.... was insolvent, whereby the said A.... B.... was induced to give him credit] *or* [assault and beat the said A.... B....] (*or as the case may be, stating the tort sued for in concise language*).

Any of the foregoing forms of particulars of causes of action may be used as forms for counterclaim, reversing the names of parties.

15 (*a*) PARTICULARS IN CASE OF DETINUE.

A.... B...., of , states that C.... D...., of , on the day of , A.D. 189 , unlawfully detained from the said A.... B.... his goods and chattels, that is to say, a horse named "Bob Foster," also a harness and sulky.

The said A.... B.... claims a return of the same or their value, and $ for their detention.

16. PARTICULARS OF CLAIM IN ACTION FOR DAMAGES TO LANDS BY FLOODING.

(Applicable only to certain judicial districts under 52 Vict., cap. 16, sections 13 and 17, being "An Act respecting Damage to Lands by Flooding in the new Districts.")

(This form can only be used when the proceeding is by ordinary summons) (commencement same as in form *ante* 15).

1. For that the defendant constructed a drain and flooded 4 acres of the plaintiff's lands, being Lot No. , in the concession, and thereby has done damage to the plaintiff to the extent of $20, of which damages the following are the particulars:—

4 acres of land rendered useless	$10 00
Value of crop of oats on the land.....	10 00
Total.....:.....	$20 00

A.... B....,
Plaintiff.

2. For that the defendant is a mill owner (or a person engaged in lumbering), and has caused damage to lands of the plaintiff by overflowing the same for the purpose of driving logs (or timber or a sawmill) to the amount of $20, which he claims from the defendant. (See 52 Vict., chap. 16, sections 13 and 17.)

---

17. FORM OF PARTICULARS OF CLAIM IN CASE OF A SUIT ENTERED UNDER SECTION 82.

(Same in all respects as forms 14 to 16, with the following conclusion: "And the plaintiff enters this suit and claims to have it tried and determined in this court, because the place of sitting thereof is the nearest to the residence of the defendant.")

---

18. PARTICULARS IN ACTIONS AGAINST A CLERK OR BAILIFF AND HIS SURETIES.

No. , A.D. 18 .

Henry Bray, of , claims of John Noakes, Clerk (*or* Bailiff) of the Division Court for the County of , and of E.... F...., of , and G.... L...., of (sureties for and parties with the said John Noakes to a covenant for the due performance of the duties of his said office), the sum of for moneys had and received by the said John Noakes as such Clerk (*or* Bailiff) as aforesaid, in a certain cause in the said Division Court, wherein the said Henry Bray was plaintiff, and one H.... S.... was defendant, to and for the use of the said Henry Bray, the payment whereof the said John Noakes unduly withholds. And also (*stating in like manner any other similar claim*)—[*or* the sum of for damages sustained by the said Henry Bray through the misconduct (*or* neglect) of the said John Noakes in the performance of the duties of his said office: For that on the day of , at (*describe in ordinary language the neglect or misconduct, whereby the damage was occasioned*)].

HENRY BRAY.

19. DEFENCES.

(*Title of Court and Style of Cause.*)

Take notice that I will admit, on the trial, the first, second, and third items of the plaintiff's particulars to be correct (*or* the signing or endorsement of the promissory note sued upon (*or as the case may be*), *or*,

Take notice that I dispute the claim of the plaintiff (*or here specify all or any of the grounds of defence, statutory or otherwise, set forth in the form for clerk's notices*).

Dated this day of , A.D. 189 .

X.... Y....

To the clerk of the court and to the said plaintiff.

In actions against an executor or administrator :

(1) The defendant does not admit, but denies the plaintiff's claim.
Or, (2) The defendant admits the plaintiff's claim, but not the assets.
Or, (3) The defendant admits assets, but not the plaintiff's claim.
Or, (4) The claim is barred by the Statute of Limitations.
Or, (5) Payment was made by deceased.
Or, (6) The claim is fraudulent in the following particulars :

(Here set out particulars briefly.)

Or, (7) The defendant is entitled to a set-off, of which the following are the particulars :—

(Here show particulars.)

Or, (8)The claim was released by deed dated the day of 189 .
Or, (9) Notice was given and assets distributed under Revised Statutes of Ontario, chapter 110.

Particulars of the notice :

Advertisement in the *Chronicle* newspaper, of January 10th, 1890 ; *Toronto Mail*, 5th January, etc.

(Here set forth the titles of the papers and dates of issue in which the advertisements were inserted.)

(Sgd.) A.... B....,
Defendant.

---

20. SET-OFF.

(*Style of Cause.*)

In the Division Court in the County of
No. , A.D. 18 .

(*Style of Cause.*)

Take notice that I intend to avail myself of the law of set-off, and at the hearing of this cause will claim a set-off against the plaintiff's demand, the particulars of which set-off are hereto annexed, *or* (hereunder written).

Dated the day of , A.D. 18 .

To the above-named plaintiff and to the clerk of the said court. } CHARLES DYKE,
Defendant.

21. COUNTERCLAIMS.

In the Division Court in the County of

Between A.... B...., *Plaintiff*,
and
C.... D...., *Defendant*.

The promissory note was given as the consideration for a horse sold by the plaintiff to the defendant.

The plaintiff warranted the horse to be sound, but it was wholly unsound and of no value.

The defendant counterclaims damages for breach of warranty $100.

The defendant disputes (or admits) the plaintiff's claim.

The plaintiff was indebted to one John Orr in $100 on account of goods sold and delivered by the said John Orr to the plaintiff, a statement which is as follows, viz. :—

(Here copy the account.)

The plaintiff by writing assigned the said account to the defendant on the third day of June, 18 , before this suit.

The defendant counterclaims $100.

The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery, by the plaintiff to the defendant, of 100 tons of Pennsylvania cannel coal at $5 per ton, F.O.B. at Port Stanley, by equal monthly deliveries over the first five months of 1892.

The April and May instalments were not delivered.

Particulars of the damages are as follows :—

Difference between the market price in April and May and the contract price, at $2.50 per ton on forty tons = $100.

The defendant counterclaims $84 arising from the following facts :—

Downs & Company contracted with the plaintiff to erect certain buildings for him in the City of St. Thomas, at a schedule of prices, and to complete them by the 1st October, 1891. The plaintiff entered into possession of them. At that time there was due from the plaintiff to Downs & Company, in respect of the contract, a balance of $84, and all conditions had been performed and all times had elapsed necessary to entitle Downs & Company to recover that sum from the plaintiff.

By deed of the 5th November, 1892, Downs & Company assigned to the defendant all their interest in the debt of $84, and on the 6th November the defendant gave the plaintiff notice of the assignment, but the plaintiff never paid the debt.

The defendant says that the contract contained a clause, whereby it was provided that the plaintiff should complete the work by the 31st March, 1889, and in default thereof should pay the defendant $2 for every subsequent day during which the work should remain unfinished, and it so remained unfinished for 31 days to the 1st of May, the defendant counterclaims $62.

The plaintiff's claim is for a horse sold by the plaintiff to the defendant for $75. The plaintiff warranted the horse to be sound and good to work, but it was unsound and balky.

The defendant in due time tendered the horse back to the plaintiff in liquidation of the debt, but the defendant refused to accept the horse or to cancel the sale or any part of the debt.

The defendant sold the horse at public auction for $25 without warranty, that being the best price he could obtain for the horse, and counterclaims $60, as an equitable defence, and for a breach of warranty, and for the keep of the horse and expenses of sale; and pays the $15 into court.

On the 20th day of July, 1889, the plaintiff unlawfully assaulted, beat, and wounded the defendant, whereby he became sick, sore and injured, and was unable to follow his employment, and so remained for three weeks.

The defendant was obliged to employ a surgeon to heal his wounds, and to administer medicines during his sickness and thereby incurred expense.

The defendant counterclaims for $60 damages.

The plaintiff claims wages for work done for the defendant under an entire contract to serve him during the five summer months of 1890, from the beginning of the spring work until the end of the harvest, at $25 per month and board and washing. Before the termination of the contract, the plaintiff, without leave of the defendant, wrongfully quitted work, and left his employ without cause.

The defendant was obliged to employ other workmen, and suffered loss by being obliged to pay larger wages to laborers during harvest time, and counterclaims for $35.

AFFIDAVITS AND OATHS.

22. General Form of Heading and Conclusion of Affidavits.

(Except where otherwise given.)

In the Fifth Division Court in the County of Brant.

Between Aaron Burr, *Plaintiff*,
and
Charles C. Dyke, *Defendant*.

I, Aaron Burr, of Paris, in the County of Brant, cordwainer, make oath and say as follows:—

Sworn at Paris, in the County of Brant, this day of one thousand eight hundred and

Before me

Clerk.

(Signature.)

23. Affidavit for Leave to Sue a Party Residing in an Adjoining Division.

In the Division Court in the County of

I, A.... B...., of , Yeoman, (*or* I, E.... F...., of , Yeoman, agent for A.... B...., of, etc.,) make oath and say :—

1. That I have a cause of action against C.... D...., of , Yeoman, who resides in the Division, in the County of (*If by agent*, "That the said A.... B.... has a cause of action against C.... D...., of , Yeoman.")

2. That I (*or* the said A.... B....) reside in the Division, in the County of

3. That the distance from my residence (*or* from the said A.... B....'s residence) to the place where this court is held is about miles, and to the place where the court is held in the Division in the County of is about miles.

4. That the distance from the said C.... D....'s residence to the place where the court is held in the division where he resides is about miles, and to the place where this court is held about miles.

5. That the said division and this division adjoin each other, and that it will be more easy and inexpensive for the parties to have this cause tried in this division than elsewhere.

Sworn, etc. A.... B.... (*or* E.... F....).

---

24. Affidavit for Leave to Sue in a Division, Adjoining One in which Debtors Reside, Where There are Several.

In the Division Court in the County of

I, A .... B...., of , Yeoman, make oath and say, (*or* E.... F...., of , Yeoman, agent for A.... B...., of, etc.,) make oath and say :—

1. That I have (*or* that the said A.... B.... has) a cause of action respectively against each of the debtors named in the first column of the schedule, on this affidavit indorsed.

2. That the columns in the said schedule, numbered respectively 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th, are truly and correctly filled up, according to the best of my knowledge and belief.

3. That the divisions named in the second and third columns of the said schedule, opposite each debtor's name, respectively adjoin each other.

4. That it will be more easy and inexpensive for the parties to have the said causes, respectively, tried in this division than elsewhere.

Sworn, etc. A.... B.... (*or* E.... F....).

25. SCHEDULE REFERRED TO IN THE WITHIN AFFIDAVIT.

COLUMNS.

1st.	2nd.	3rd.	4th.	5th.	6th.	7th.
Debtor's name, place of residence, and addition.	Division in which suit is to be commenced.	Division in which debtor resides.	Number of miles from creditor's residence to where court held in division in which debtor resides.	Number of miles from creditor's residence to where court held in division in which suit to be commenced.	Number of miles from debtor's residence to where court held in division where suit to be commenced.	Number of miles from debtor's residence to where court held in division where debtor resides.
Jno. Doe, of Saltfleet, County of Wentworth, Yeoman.	Division No. 3 in the County of Lincoln.	Division No. 1 in the County of Wentworth.	22	1		17
Richard Roe, of Mono, County of Simcoe, Esquire.	Division No. 3 in the County of Simcoe.	Division No. 8 in the County of Simcoe.	2	11	18	4

A.... B. .. (*or* E.... F....).

TORONTO UNIVERSITY LAW LIBRARY

26. AFFIDAVIT FOR ATTACHMENT AGAINST ABSCONDING DEBTOR.

(*If made after suit commenced, insert style of court and cause.*)

I, A.... B...., of the , in the County of (*or*, I, E.... F...., etc., agent for the said A.... B...., of, etc.), make oath and say:—

1. That C.... D...., of (*or* late of) , in the County of , is justly and truly indebted to me (*or* to the said A ... B....) in the sum of dollars and cents (*the amount here stated must not exceed* $100, *or be less than* $4. *If the claim is for a sum in excess of* $100, *such excess must be abandoned, unless the claim be for the recovery of a debt or money demand, the amount or balance of which does not exceed* $200, *and the amount original amount of the claim is ascertained by the signature of the de t: see sections* 70 *and* 249, 255) on a promissory note for the payment of llars and cents, made by the said C.... D...., payable to me (*or* the said A.... B....) at a day now past;

Or, For goods sold and delivered,
Or, For goods bargained and sold,
Or, For crops bargained and sold,
Or, For money lent,
Or, For money paid for the said C....D.... } by me (*or* the said A.... B....) to the said C.... D....;

Or, For and in respect of my (*or* the said A.... B....) having relinquished and given up to and in favor of the said C.... D...., at his request, the benefit and advantage of work done, and materials found and provided, and moneys expended by me (*or* the said A ... B. ..) in and about the farming, sowing, cultivating, and improving of certain land and premises;

Or, For the use by the said C.... D...., by my permission (*or* by the permission of the said A.... B....), of messuages and lands of me (*or* the said A.... B....);

Or, For the use by the said C.... D.... of pasture land of me (*or* the said A.... B....), and the eatage of the grass and herbage thereon, by the permission of me (*or* the said A.... B....);

Or, For the wharfage and warehouse room of goods deposited, stowed, and kept by me (*or* the said A.... B....) in and upon a wharf, warehouse, and premises of me (*or* the said A.... B....) for the said C.... D...., at his request;

Or, For horse meat, stabling, care, and attendance provided and bestowed by me (*or* the said A.... B....) in feeding and keeping horses for the said C.... D...., at his request; *or*, for work done and materials provided by me (*or* the said A.... B....) for the said C.... D...., at his request;

Or, For expenses necessarily incurred by me (*or* the said A.... B....) in attending as a witness for the said C.... D...., at his request, to give evidence upon the trial of an action at law then depending in the Court, wherein the said C.... D.... was plaintiff and one E.... F...., defendant;

Or, For money received by the said C.... D.... for my use (*or* for the use of the said A.... B....);

Or, For money found to be due from the said C.... D.... to me on an account stated between us (*or* to the said A.... B.... on an account stated between them) (*or other cause of action, stating the same in ordinary and concise language. See form ante* 14 *for causes of action in matters of debt or contract*).

2. I further say that I have good reason to believe, and do verily believe, that * the said C.... D...., with intent and design to defraud me (*or* the said A.... B....) of my (*or* his) said debt, hath absconded from this province, leaving personal property liable to seizure under execution for debt in the said County of *.

(*Or instead of matter between the asterisks:*)

The said C.... D.... is attempting to remove his personal property, liable to seizure under execution for debt, out of this province, or from the County of to the County of in this province, with intent and design to defraud me (*or* the said A.... B....) of my (*or* his) said debt; (*or*, the said C.... D.... keeps concealed in the County of in this province to avoid service of process, with intent and design to defraud me (*or* the said A.... B....) of my (*or* his) said debt.

3. That this affidavit is not made by me, nor the process thereon to be issued, from any vexatious or malicious motive whatever.

Sworn, etc. A.... B....

---

27. AFFIDAVIT FOR ATTACHMENT AGAINST AN ABSCONDING DEBTOR WHERE THE DEBT IS OVER $100.

(*Insert title of Court and Style of Cause.*)

Commence as in the preceding form (26).

Insert after the words "indebted to me (*or* the said A.... B....)" in the sum of one hundred and dollars (*or* two hundred dollars) for principal money on a promissory note (*or* the balance due on a promissory note) made by the said C.... D...., whereby he promised to pay to me (*or* the said A.... B....) or bearer the sum of $ at a day now past (if the note is payable to order, substitute for the foregoing words, "or bearer," the words "or order"), which note was duly transferred (*or* endorsed) to me (*or* the said A.... B....), and is now due and unpaid.

[If the debt is a money demand other than a promissory note, state it according to the fact, as in form (26)], but add that the amount of the said debt (*or* money demand), *or* the original amount, *or* the balance due thereon, does not exceed $200 for principal money, and has been ascertained by the signature of the said C.... D.... (*or* of B.... K...., the person whom as executor (*or* administrator) the said C.... D.... represents). [*Conclude as in the 2nd and 3rd paragraphs of the next preceding form.*]

(See section 70.)

---

28. AFFIDAVIT OF SERVICE OF SUMMONS.

(*Commence as in form* 22.)

I, Lachlin Weir, Bailiff of the First Division Court of the County of Oxford (*or* of the said court, *or* of the Third Division Court of the County of Kent), make oath and say:—That I did, on the day of , 18 , duly serve the above-named defendant with a true copy of the summons, notices, and warnings therein, and endorsed thereon, and the particulars of claim therewith in this cause, by delivering the same personally to the said defendant (*or* defendants) (*or, if but one served*, "to C.... D...., one of said defendants") (*or, if the service was not personal, state how and on whom served*), by delivering the same to his wife, *or* to his servant, *or* to *one* Henry Roe, who is a grown person and an inmate of and at the defendant's dwelling house *or* usual place of abode, trading or dealing (*see section* 99 *of the Act*), and that I necessarily travelled miles to make such service.

The service may be otherwise than personal where the amount claimed does not exceed $15, or in the judge so orders it, or in case of attachment.

The service must be personal where the amount claimed exceeds $15.

Sworn, etc.

V.... W....,
Bailiff.

(*Or this form may be used when the affidavit is endorsed on the summons:*)

I swear that this summons and claim therewith were served by me on the day of , by delivering a true copy of both, personally, to the defendant (*or* to the wife *or* servant of the defendant, *or* to Henry Roe, a grown-up person, being an inmate of and at the defendant's dwelling house, or usual place of abode, trading or dealing), and that I necessarily travelled miles to do so.

Sworn, etc. V.... W....,
Bailiff.

N.B.—This affidavit must not be prepared in a perfunctory way. In all cases it must be prepared by the clerk, and with care, as to its correctly and amply complying with the statute in every respect.

---

29. AFFIDAVIT OF SERVICE OF SUMMONS ON AN ABSCONDING DEBTOR BY LEAVING COPY, ETC., WITH PERSON DWELLING AT HIS LAST PLACE OF ABODE.

(*Commence as in form* 22.)

1. That I did on the day of , A.D. 18 , serve (*naming him*) the above-named defendant in this cause with the within (*or "annexed"*) summons, notices and warnings therein, and the particulars of claim therewith in this cause, by delivering a true copy of each to and leaving them with (*naming the person*), at the last place of abode in this province, of the above-named defendant, and that at the time of such service the said (*naming the person to whom papers delivered*) was dwelling at the defendant's said last place of abode, and that I necessarily travelled miles to make such service.

Sworn, etc.

---

30. AFFIDAVIT OF SERVICE OF SUMMONS ON AN ABSCONDING DEBTOR BY LEAVING COPY, ETC., AT LAST PLACE OF ABODE OR DWELLING OF DEBTOR, NO PERSON BEING THERE FOUND.

(*Commence as in form* 22.)

1. That I did on the day of , A.D. 18 , serve (*naming him*) the above-named defendant in this cause with the within (*or "annexed"*) summons, notices and warnings therein, and the particulars of claim therewith in this cause,* by leaving a true copy of each at the last place of abode and dwelling of the defendant in this province, and that at the time of so leaving them there no person could be there found, and that I necessarily travelled miles to make such service.

Sworn, etc.

---

31. AFFIDAVIT OF SERVICE OF SUMMONS ON AN ABSCONDING DEBTOR BY LEAVING COPY, ETC., AT HIS LAST PLACE OF TRADE OR DEALING.

(*Commence as in last form down to asterisk * and proceed:*)

By delivering a true copy of each to and leaving them with (*naming the person*) at the last place of trade and dealing of the above-named defendant in this province, and that at the time of such service the said (*naming the person served*) was dwelling at the defendant's said last place of trade and dealing, and that I necessarily travelled miles to make such service.

Sworn, etc.

32. Affidavit of Execution of Confession.

(*Commence as in form* 22.)

I, , Clerk (*or* Bailiff) of the Division Court, in the County of (*or* of the said court), make oath and say:—That I saw the above (*or* annexed) confession duly executed by the defendant, and that I am a subscribing witness thereto, and that I have not received, and that I will not receive, anything from the plaintiff *or* defendant, or any other person, except my lawful fees, for taking such confession, and that I have no interest in the demand sought to be recovered in this action.

X.. . Y.... (*or* V.... W....).

Sworn before me, etc.

---

33. Affidavit for Judgment Summons under the Proviso Contained in Section 235.

(*Title of Court and Style of Cause.*)

I, , of the of , in the County of and Province of Ontario, , make oath and say:—

1. That I am the above-named plaintiff (*or* "the solicitor or agent" for the above-named plaintiff, *as the case may be*) in this cause.

2. That judgment was recovered in this cause on the day of , in the year of our Lord, 189 , for the sum of dollars, debt (*or* "damages" or "costs," *as the case may be*), and the sum of dollars for costs of suit, and that the whole (*or* dollars, "part") of the said judgment remains unsatisfied.

3. That I believe C.... D...., the defendant, sought to be examined herein, is able to pay the amount due in respect of the said judgment, or some part thereof (*or* "that C.... D...., the defendant, sought to be examined herein, has rendered himself liable to be committed to gaol under The Division Courts Act").

Sworn, etc. A.... B....

---

34. Affidavit against a Judgment Debtor under Section 239.

(*Insert title of Court and Style of Cause.*)

I, A.... B.... , of in the County of , Merchant, make oath and say as follows:—

1. That I am the plaintiff (*or the solicitor or agent of the plaintiff*) in this cause, and have a personal knowledge of the facts hereinafter set forth.

2. That the plaintiff recovered judgment against the defendant in this cause on the day of , A.D. 18 , for the sum of dollars, and cents, which is still wholly (*or partly*) due and unpaid (*state how much*).

3. That the defendant was summoned and examined as a judgment debtor on the day of , A.D. 18 , upon the application and at the suit of , being a creditor of the said defendant (*or if of this plaintiff then state it*), and after his said examination was discharged by the judge.

4. That the defendant resides in the County of .

5. That the following facts which were not then before the court, upon the said examination, have since come to my knowledge (*here state the facts*).

6. That the said defendant did not at the said examination make a full disclosure of his estate, effects, and debts , because (*here state in what respect the defendant did not make such disclosure*), and the reasons for making this statement are (*here fully state the reasons of the deponent for making the allegation*).

Or, instead of the foregoing paragraphs, Nos. 5 *and* 6, *state:*

That since the said examination the said defendant hath acquired the means of paying the said judgment or some part thereof (*here state what the means were and how the deponent is aware of the facts stated as to the defendant having acquired such means*).

Sworn, etc. A.... B....

---

35. Affidavit of Execution of any Instrument.

(*Title of Court and Style of Cause.*)

I, O.... P...., of the, etc., make oath and say :—That on the day of , A.D. 18 , I was present and saw G.... H.... and K.... L.... (*as the case may be*) duly sign and execute the annexed award (*or bond or other instrument*).

That I know the said persons who so signed and executed the said , and I am a subscribing witness to the execution of the same by them respectively.

Sworn, etc.

---

36. Affidavit for Revival of Judgment.

(*Title of Court and Style of Cause.*)

I, A.... B...., of the of , in the County of , Yeoman, make oath and say as follows :—

1. On the day of , A.D. 18 , I recovered a judgment of this court, against the above-named defendant, for $ debt (*or* damages), and $ costs of suit.

2. No part of said moneys so recovered has been paid or satisfied, and the said judgment remains in full force (*or*, the sum of $, part only of said moneys, has been paid, and the judgment remains in full force as to the residue of the said moneys so recovered thereby).

3. I am entitled to have execution of the said judgment and to issue execution thereupon for the sum of $, as I verily believe.

Sworn, etc.

Memo.—If the affidavit be made by the plaintiff's attorney or agent, make the necessary alterations in the above form and add :—

4. I am the duly authorized attorney (*or* agent) of the plaintiff in this matter, and have a personal knowledge of the facts herein set forth.

Sworn, etc. A.... B....

37. AFFIDAVIT ON APPLICATION OF EXECUTOR OR ADMINISTRATOR TO REVIVE A JUDGMENT.

(*Insert title of Court and Style of Cause.*)

I, Aaron Barr, of, etc., make oath and say as follows:—

1. On the day of , A.D. 18 , the plaintiff, now deceased, recovered a judgment of this court against the defendant above named for $ debt, and $ costs of suit.

2. That no part of the said judgment so recovered has been paid or satisfied, and the said judgment remains in full force (*or* the sum of $, part only of the said moneys, has been paid, and the said judgment remains in full force for the residue).

3. That I was (*or* Charles Fox, of the Town of , in the County of , Yeoman, was) on the day of , 18 , duly appointed the executor (*or* administrator) of the property of the said deceased plaintiff.

4. That I am, as such executor (*or* administrator), entitled (*or* the said Charles Fox as such executor *or* administrator is entitled) to have execution of the said judgment, and to have execution issued thereupon, as I verily believe, for the sum of $.

Sworn, etc. A.... B....

---

38. AFFIDAVIT FOR REVIVAL OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR.

(*Insert title of Court and Style of Cause.*)

I, Aaron Barr, of the Town of St. Marys, in the County of Perth, Yeoman (*if the affidavit be made by the plaintiff's solicitor or agent make the necessary alteration*), make oath and say as follows:—

1. On the day , A.D. 18 , I recovered a judgment of this court against the above-named George Raymond, since deceased, for $ debt, and $ costs of suit.

2. No part of said moneys so recovered has been paid or satisfied, and the said judgment remains in full force (*or* "the sum of $, part only of the said moneys, has been paid, and the judgment remains in full force as to the residue of the said moneys so recovered thereby").

3. That William Bush, of the Township of Woodhouse, in the County of Norfolk, Yeoman, was duly appointed the executor (*or* administrator) of the property of the deceased.

4. I (*or* "the said plaintiff") am entitled to have execution of the said judgment, and to issue execution thereupon for the sum of $, as I verily believe.

Sworn, etc. A.... B....

39. AFFIDAVIT UNDER SECTION 217 (AS AMENDED BY SECTION 24, DIVISION COURTS ACT, 1889) FOR FURTHER PROCEEDINGS WITHOUT A JUDGE'S ORDER AFTER TRANSCRIPT TO FOREIGN COURT.

(*Title of Court and Style of Cause.*)

(*Commence as in other affidavits.*)

1. That the judgment rendered in this cause remains unsatisfied in whole (*or in part, as the case may be, showing how much remains unpaid*).

2. That an execution issued out of the Division Court of the County of , to which a transcript was issued from this court, has been returned *nulla bona* [*or* that I believe the defendant has not sufficient goods in that division to satisfy the said judgment].

(*Jurat and conclusion as in other affidavits.*)

---

40. AFFIDAVIT OF DISBURSEMENTS TO SEVERAL WITNESSES.

No. 18.

(*Title of Court and Style of Cause.*)

I, A. .. B...., of , the above plaintiff (*or* C.... D...., the above defendant, *or* E.... F...., agent *or* solicitor for the above plaintiff *or* defendant), make oath and say :—

1. That the several persons whose names are mentioned in the first column of the schedule at the foot hereof were necessary and material witnesses on my behalf (*or* on behalf of the said plaintiff *or* defendant), and attended at the sittings of this court on the day of , as witnesses on my behalf (*or* on behalf of the said defendant *or* plaintiff), and that they did not attend as witnesses in any other cause (*if otherwise, state the facts*).

2. That each of the said witnesses necessarily travelled in going to said court and attending the said trial the number of miles respectively mentioned in figures in the second column of the said schedule opposite to the names of each of the said witnesses, respectively.

3. That each of the said witnesses was necessarily absent from his (*or her*) home in order so to attend the said trial the number of days set forth in the third column of the said schedule opposite the names of them respectively.

4. That the several and respective sums of money mentioned in figures in the third column of the said schedule, opposite to the names of the said witnesses, respectively, have been paid by me (*or* by the plaintiff *or* defendant) to the said witnesses respectively as in the said schedule set forth for their attendance and travel as witnesses in this cause. (*Conclude with jurat as in other affidavits.*)

A.... B....

SCHEDULE REFERRED TO IN THE FOREGOING AFFIDAVIT.

Names of witnesses.	Miles.	Absent from home.	Sums paid.
1	2	3	4

NOTE.—Where the party seeks to be allowed his own expenses for attendance, he must swear both that he was a necessary and material witness on his own behalf, and that he would not have attended the court except for the purpose of giving evidence in the case.

41. Forms of Oaths, etc.

(*a*) To a witness at the trial who swears upon the Bible:

"The evidence you shall give to the court (and jury sworn), touching the matters in question between the parties, shall be the truth, the whole truth, and nothing but the truth. *So help you God.*"

(*b*) To a witness who swears with uplifted hand:—

Add to the foregoing after the last word "*truth*": "And this you do swear in the presence of the ever-living God, and as you shall answer to God at the great judgment day. *So help you God.*"

(*c*) To a Jew: He is to be directed to cover his head, the Pentateuch is to be opened and placed before him, then proceed as in the first form, only make use of the name "*Jehovah*" instead of "*God.*"

(*d*) To a Quaker, Mennonist, or Tunker, or member of the church known as the *Unitas Fratrum* or United Brethren, or other person allowed by law to affirm:—

The witness is to be directed to repeat his name, after the clerk and the following: I, K.... L...., do solemnly, sincerely, and truly declare and affirm that I am one of the society called Quakers" (*or* Mennonists, Tunkers, or *Unitas Fratrum* or Moravians, *as the case may be*), after which, the affirmant repeating his name, "I, K.... L...., do solemnly, sincerely, and truly affirm and declare that the evidence I shall give to this court touching the matters in question," etc.

(*e*) To a person referred to in R.S.O. (1887), cap. 61, sec. 13:—

"I, M.... N...., do solemnly, sincerely, and truly affirm and declare that the taking of an oath is according to my religious belief unlawful; and I do also solemnly, sincerely, and truly affirm and declare," etc. (*as in form* (*d*) above).

(*f*) To an interpreter (where witnesses cannot speak English, or are deaf and dumb, or dumb):—

"You shall truly interpret between the court (the jury), the parties in this cause, and the witness produced. *So help you God.*"

(*g*) To jury called by parties:—

"You and each of you shall well and truly try the matters in difference between the parties, do justice between them according to the best of your skill and ability, and a true verdict give according to the evidence. *So help you God.*"

(*h*) To jury called by the judge:—

"You and each of you shall well and truly try the facts controverted in this cause between the parties, and a true verdict give according to the evidence. *So help you God.*"

(*i*) To a defendant who appears upon a judgment summons:—

"You shall true answers make to all such questions as shall be put to you touching the subject upon which you have been now summoned to appear for examination, and what you shall state respecting the same shall be the truth, the whole truth, and nothing but the truth. *So help you God.*"

(*j*) To the officer who conducts a retiring juror out of court:—

"You shall retire with such jurors as have leave of absence from this court, you shall not speak to them yourself in relation to the subject of this trial, nor suffer any person to speak to them, and you shall return with them without unnecessary delay. *So help you God.*"

(*k*) To the officer when the jury retire to consider their verdict :—

"You shall keep every person sworn on this jury in some private and convenient place without meat or drink ; you shall not suffer any person to speak to them, or speak to them yourself, except to ask them whether they have agreed on their verdict. *So help you God.*"

(*l*) To a deponent or affirmant making an affidavit or affirmation :—

"You do swear (or affirm) that the contents of this affidavit (*or* affirmation) to which you have subscribed your name (*or* made your mark) are just and true. *So help you God.*" (*Or*, "And so you solemnly, sincerely, and tru'y declare and affirm.")

(*m*) OATH TO BE ADMINISTERED TO WITNESS BY ARBITRATOR OR UMPIRE.

"The evidence which you shall give before me as arbitrator (*or* umpire), touching the matters in difference in this reference, shall be the truth, the whole truth, and nothing but the truth. *So help you God.*"

(*n*) JURAT TO AFFIDAVIT BY ILLITERATE OR BLIND DEPONENT.

Sworn by the above-named deponent, A.... B...., at , in the County of , on , and I certify that the affidavit was first read in my presence to said A.... B...., who seemed perfectly to understand the same, and wrote his signature (*or* made his mark) thereto in my presence.

X.... Y...., *Clerk, etc.*
Or as the case may be.

(*o*) AFFIRMATION BY QUAKERS, ETC., AND JURAT THERETO.

(Insert title of Court and Style of Cause.)

I, A.... B...., of , etc., do solemnly, sincerely, and truly declare and affirm that I am one of the society called Quakers (*or* Mennonists, Tunkers, *Unitas Fratrum* or Moravians, *as the case may be*), and I do also solemnly, sincerely, and truly declare and affirm as follows, that is to say (*state the facts*).

Solemnly affirmed at , in the County of , on , before me. } A.... B....

X.... Y...., *Clerk, etc.*
Or as the case may be.

---

42. AFFIDAVIT ON APPLICATION TO CHANGE THE VENUE.

(*Insert Title of Court and Style of Cause.*)

I, C.... D...., of , make oath and say :—

1. That I am the above-named defendant in this cause, and was served with the summons herein on the day of instant (*or* last past).

2. That I intend to defend this suit ; that I have a good defence to this action upon the merits ; that the cause of action herein did not wholly arise in the division in which this action is brought ; and that the witnesses for the defence (*or* some of the witnesses for the defence) reside within the division in which I resided (*or* carried on business, *or* resided and carried on business, *as the case may be*) at the time this action was brought, namely : (*here set out the names and residences of such witnesses*) ; and that the application to be made herein is not to be so made for the purpose of delay.

3. That at the time this action was so brought I resided (*or* carried on business, *or* resided and carried on business, *as the case may be*) within the limits of the Division Court for the County of , and that the next two sittings of the said last-mentioned court will be held on the (*here give the dates particularly, and, if possible, the hour of opening of the court*), and that I desire to have this cause transferred to that court, and tried at one of such sittings.

Sworn, etc. C.... D....

[Should the affidavit be made by one of several defendants, or by a solicitor or agent, it can be easily adapted.]

GARNISHEES.

43. Affidavit for Order to Garnish Debt.

(*Insert title of Court and Style of Cause.*)

I, A.... B...., of the of , in the County of , the plaintiff in this suit (*if the affidavit be made by the plaintiff's solicitor or agent, make the necessary alteration*), make oath and say:—That judgment was recovered in the cause against the above-named defendant on the day of , A.D. 18 , for the sum of $ debt and costs (*or according to the judgment, in case the judgment has been transferred to another court, here state the fact*). That the said judgment remains wholly unsatisfied (*or* that $, part thereof, yet remains unsatisfied).

That I have reason to believe, and do believe, that E.... F...., who is residing at , within this province, is (*or if the person indebted to the defendant be not known, say,* "That one or more persons who are residing within this province, whom I am unable to name, are") indebted to the defendant in the sum of $ (*or if the amount be unknown say,* "In an amount which I am unable to name").

Sworn before me at the of in the County of , this day of , A.D. 18 . } A.... B....

---

44. General Form of Heading and Conclusion of Affidavits in Garnishee Proceedings.

In the Fifth Division Court of the County of Brant.

Between A.... B...., *Primary Creditor*,
and
C.... D...., *Primary Debtor*,
and
E.... F...., *Garnishee*.

I, G ... H...., of , make oath and say:—

Sworn at , in the County of , this day of one thousand eight hundred and , before me. } [Signature.]

SUMMONSES AND WARRANTS.

45. General Form of All Summonses, Subpœnas, Warrants, Executions, and Other Process, Under the Seal of the Court.

No. , A.D. 18 .

In the First Division Court in the County of York.

{ Seal. }

Between JOHN DOE, *Plaintiff*,
and
BENJAMIN FRANKLIN, *Defendant*.

To

Given under the seal of the court this tenth day of June, A.D. 18 .

R. ROE, *Clerk*.

---

46. In garnishee notices and proceedings, admissions, orders, and warrants, etc., change the foregoing (Form 45) as follows :—

No. , A.D, 189 .

In the First Division Court in the County of Brant.

{ Seal. }

Between AARON BURR, *Primary Creditor*,
and
CHARLES DYKE, *Primary Debtor*,
and
ELI FORBES, *Garnishee*.

(NOTE.—If another party added, insert "Geofrey Robertson, Claimant, added as a party.")

Dated this day of , 18 .

Clerk.

(Or person sending notice or making admission or signing order.)

To

(The person to whom notice is sent.)

---

47. Special Summons.

No. , A.D. 18 .

In the Division Court in the County of

{ Seal. }

Between HENRY BRAY, *Plaintiff*,
and
JOHN NOKES, *Defendant*.

To the above-named defendant :—

Take notice that the above-named plaintiff claims from you dollars, as shown by his particulars of claim herewith. If the amount of the claim with lawful costs be paid to the clerk of this court within days from the service hereof upon you, no further proceedings will be taken.

Unless within days after the service of this summons on you, you enter with the clerk of this court a notice in writing that you intend to dispute this claim, the clerk may enter judgment at his office and issue execution against you.

In case you give such notice disputing the claim, the cause will be tried at the sitting of this court to be held at , in the said County of , next after the expiration of days from the time this summons is served on you, and the sittings of the court are set forth below.

Given under the seal of the court this day of , A.D. 18 .

RICHARD ROE,
Clerk.

Claim..... $
Costs, exclusive of mileage.. $

NOTICES AND WARNINGS TO THE DEFENDANT.

No. 1. If the defendant disputes the plaintiff's claim, or any part of it, he must leave with the clerk within days after the day of the service hereof a notice to the effect that he disputes the claim, or, if not the whole claim, how much he disputes, in default whereof final judgment may be signed for the whole claim, or such part as is not disputed at any time within one month after the return of the summons, without prejudice to the plaintiff's right to recover for the remainder of the claim.

No. 2. If the defendant desires to set off any demand or counterclaim against the plaintiff at the trial or hearing of this cause, or to take the benefit of any statute of limitations or other statute, notice thereof in writing, together with particulars of the set-off or counterclaim, must be left with the clerk of the court and served on the plaintiff, or left at his usual place of abode, if he is living within the division, not less than five days before the day on which the cause will be tried, and in case the plaintiff does not reside within the division such notice and particulars must be left with the clerk for him.

No. 3. In cases of tort or replevin where the sum or value of the goods or damages sought to be recovered exceeds $20, and in all other cases where the amount sought to be recovered exceeds $30, the defendant may have the action tried by a jury by giving notice in writing at the clerk's office five days after service of this summons on him, and on payment of fees for summoning the jury.

No. 4. On the day of trial the defendant must bring all the books and papers necessary to prove his case, or in any way connected with it or with his transactions with the plaintiff.

No. 5. Summonses for witnesses and for the production of documents may be obtained at the office of the clerk upon payment of the proper fee.

No. 6. The ensuing sittings of the court will be held as follows, viz.: At o'clock a.m. on Monday, the day of , A.D. 18 , at o'clock a.m. on Tuesday, the day of , A.D. 18 , etc.

(Here may be inserted the time of one or more subsequent sittings specifying the hour of the day of the week and month, plainly written in words at full length, and not expressed by figures or contractions of words.)

Endorse notice under section 98 (Form No. 48).

---

48. NOTICE REQUIRED TO BE ENDORSED UPON EVERY SUMMONS, BY SECTION 98.

To the within-named defendant:—

Take notice that, in any case in which an order may be made changing the place of trial, application must be made therefor to the judge of this court within eight days after the day of service hereof (where the service is required to be ten days before the return), *or* within twelve days after the day of such service (where the service is required to be fifteen days or more before the return).

49. ORDINARY SUMMONS.

No. . } In the Division Court in the County
A.D. 18 . } of

Seal.

Between HENRY BRAY, *Plaintiff*,
and
JOHN NOKES, *Defendant*.

To the above-named defendant :—

Take notice that the above-named plaintiff claims from you dollars, as shown by his statement of claim herewith. Unless within days after the service of this summons on you, you enter with the clerk of the court a notice in writing that you intend to dispute the claim, it will be considered that you have no defence, and the said plaintiff may, at the sitting of this court next after the expiration of days from the time this summons is served on you, proceed to prove the amount of his claim against you, in your presence or absence. In case you give such notice disputing the claim, the cause will be tried at the sitting of this court to be held at , in the said County of , next after the expiration of days from the time this summons is served on you, and the sittings of the court are set forth below.

Given under the seal of the court this day of , A.D. 18 .

RICHARD ROE,
Clerk.

Claim ..... $
Costs, exclusive of mileage.... $

Add notices and warnings as in form for special summons (No. 47), except No. 1.

Endorse notice under section 98 (Form No. 48).

50. In case of an action against an executor or administrator where it is intended to charge him with a devastavit, add the following suggestion :—

(*Commence with form of summons as in "Ordinary Summons," but naming defendant as executor or administrator, and adding after the words "against you" in the above*) and the plaintiff alleges that you, the defendant, have money, goods, and chattels, which were the property of the said C..... D...., deceased, at the time of his death, and which came to your hands as such executor (*or* administrator) to be administered ; and if not, that you have withheld or wasted the same.

---

51. MEMORANDUM TO BE PUT ON ALL OTHER SUMMONSES.

On the day of trial the defendant must bring all the books and papers necessary to prove his case, or in any way connected with it or with his transactions with the plaintiff.

In cases of tort or replevin where the sum or value of the goods or damages sought to be recovered exceeds $20.00, and in all other cases where the amount sought to be recovered exceeds $30.00, and in all cases of interpleader, the defendant may have the action tried by a jury by giving notice in writing at the clerk's office five days after service of this summons on him, and on payment of fees for the expenses of the jury.

Summonses for witnesses and for the production of documents may be obtained at the office upon payment of the proper fee.

52. WARNING TO BE ADDED TO THE PARTICULARS OR THE WARNINGS ON THE SUMMONS WHERE SUIT BROUGHT UNDER SECTION 239.

"The defendant is informed and cautioned that I.... K.... (*insert the name of the beneficial plaintiff*) only has power to discharge this suit, the subject-matter thereof having been seized under execution."

---

53. SUMMONS TO EXECUTOR OR ADMINISTRATOR, WHERE PLAINTIFF INTENDS TO APPLY TO THE COURT, ALLEGING THAT ASSETS HAVE COME TO THE DEFENDANT'S HANDS SINCE JUDGMENT.

No. , A.D. 18 .

In the Division Court in the County of

{ Seal. }

Between A.... B.... , *Plaintiff*,
and
C.... D.... , Executor (*or* Administrator) o
E.... F...., deceased,
Defendant.

The plaintiff having learned that property of the said deceased has come to your hands as executor (*or* administrator) since the judgment herein, to be administered, and that you have withheld and wasted the same, intends to apply at the sitting of this court to be held at , in the said County of , next, after the expiration of days from the time this summons is served on you, for an order that the debt and costs be levied of the goods and chattels of the said deceased, if you have so much thereof to be administered, and that, if you have not, then that it shall be levied of your own proper goods and chattels, and that the costs be levied of your proper goods and chattels.

You are, therefore, hereby summoned to appear at the said court, to answer touching the matter aforesaid. The sittings of the court are set forth below.

Given under the seal of the court this day of , 18

To

The above-named defendant.

Add warnings and notices as in the ordinary summons.
Add dates of sittings of court.
And endorse notice under section 98.

---

54. SUMMONS TO DEFENDANT AFTER JUDGMENT.

No. , A.D. 18 .

In the Division Court in the County of

Between A.... B.... , *Plaintiff.*
and
C.... D.... , *Defendant.*

{ Seal. }

To the above-named defendant :—

Whereas on the day of , A.D. 18 , the plaintiff duly recovered judgment against you in said court for $ for debt, and $

for costs of suit, which remains unsatisfied, you are therefore hereby summoned to appear at the next sittings of this court, to be held at , in the said County of , on the A.D. 18 , at the hour of o'clock in the noon, to be then and there examined touching your estate and effects, and the manner and circumstances under which you contracted the said debt (*or* incurred the damages *or* liability) which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectations you then had, and as to the property and means you still have, of discharging the said debt (*or* damages *or* liability), and as to the disposal you may have made of any of your property. And take notice that, if you do not appear in obedience to this summons, you may, by order of this court, be committed to the common gaol of the county.

Given under the seal of the court this day of , 18 .

By the court.

X.. . Y...,
Clerk.

Amount of judgment.....$
Costs of this summons.....$

---

55. JUDGMENT SUMMONS AFTER DEFAULT.

No. , A.D. 18 .

In the Division Court in the County of

{Seal.}

Between A.... B.... , *Plaintiff*,
and
C.... D.... , *Defendant*.

[Stamp.]

Whereas at the sittings of the court (*or* of, etc.), holden at the in the Town of of , in the Co , on the day of , 18 , the above-named plaintiff ined a judgment against you for the sum of $ for debt, besides inter thereon and $ costs to be paid and which said judgment remained unsatisfied.

And whereas by a summons bearing date the day of , 18 , you were summoned to appear at the sittings of this court, holden at the of , in the County of , on the day of , 18 , at the hour of of the clock in the forenoon, to be then and there examined by the judge of the said court, touching your estate and effects, and the manner and circumstances under which you contracted the said debt, which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectations you then (at the time of contracting) had, and as to the property and means you still had (at the said last day aforesaid) of discharging the said debt, and as to the disposal you may have made of any of your property.

And whereas upon your appearing thereto, and upon examination and hearing of both parties (*or* of you, and the evidence, *if any*), it appeared, to the satisfaction of the said judge, that you then had (*or* had since the judgment obtained against you, *as the case may be*) sufficient means and ability to pay the said debt and the interest thereon and costs so recovered against you; and the said judge did then and there order and direct that you should pay to the said plaintiff the sum of $ debt, and interest then accrued, and $ costs, and also $ costs of the said last-mentioned summons, to be paid as follows, that is to say: the sum of $ to be paid on the day of , 18 , the further sum of $ to be paid on the day of , 18 , or forthwith (*as the case may be*).

And whereas the plaintiff alleges that you have not paid the and instalments of each (*or* the said sums), so ordered to be paid.

You are therefore hereby summoned to appear at the next sittings of this court, to be holden at the in the Town of , in the County of , on the day of , 18 , at the hour of of the clock in the forenoon, to be then and there examined by the judge of the said court touching your estate and effects, and the manner and circumstances under which you contracted the said debt, which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectations you then had, and as to the property and means you still have, of discharging the said debt, and as to the disposal you have made of any of your property, and as to the reasons why you have not paid to the plaintiff the said and instalments of each, of the said debt, so ordered to be paid by you, as last above mentioned and recited, pursuant to the said order of the judge.

And also to show cause why you should not be committed to the common gaol of the county for not complying with the said order of the said judge.

Given under the seal of the court this day of , 18 .

By the court,

X.... Y....,

Clerk.

Amount of judgment.....$
" instalment.....$
Cost of this summons.....$

---

56. SUMMONS AT INSTANCE OF CLERK FOR PAYMENT OF FEES UNDER SECTION 55.

Insert title of Court and Style of Cause (if more causes than one, state the others).

{ Seal. }

To the above-named plaintiff (*or* to X.... G....):—

The clerk of this court demands of you the sum of $ for the fees and costs of this suit, and you are hereby summoned to be and appear at the next sitting of this court to be holden at (*as the case may be*) in the said County of , on Monday, the day of , A.D. 18 , at the hour of 10 o'clock in the forenoon, and then and there to show cause why you should not be ordered by the judge to pay the said fees and costs, a statement of which is hereunto annexed ; and which, according to the provision of the 54th section of The Division Courts Act, were payable in the first instance by you, but which you did not pay.

In the event of your not so appearing and showing cause why you should not pay the same forthwith, or of your not paying the same, an order of the judge will be obtained and issued against you, under the 55th section of the Act, directing you to pay the same to the clerk, which will be followed and enforced by execution against your goods and chattels, or by such other ways and means as any debt or damages ordered by the court to be paid can be recovered. If you pay the same before the sittings of the court, no further costs will be incurred than the costs of this summons and the bailiff's fees for service hereof and mileage.

(Conclude as in other summonses.)

.....,

Judge.

57. Summons to Jurors.

{ Seal. }

In the Division Court, in the County of

You are hereby summoned to appear and serve as a juror in this court, to be holden at on the day of , A.D. 18 , at the hour of a.m.; herein fail not at your peril.

Given under the seal of the court this day of , 18 .

X.... Y....,
Clerk.

To

---

58. Summons to Witness.

(*Insert title of Court and Style of Cause.*)

{ Seal. }

You are hereby required to attend at the sittings of the said court, to be holden at , on Tuesday, the 7th day of July, A.D. 18 , at the hour of in the forenoon, to give evidence in the above cause, on behalf of the above-named [and then and there to have and produce (*state particular documents required*) and all other papers relating to the said action in your custody, possession, or power].

Given under the seal of the court this day of , 18 .

X.... Y....,
Clerk.

To

---

59. Summons to Witness to Appear before Arbitrator.

{ Seal. } (*Insert title of Court and Style of Cause.*)

You are hereby required to attend before , the arbitrator (*or* arbitrators) to whom this cause stands referred, at on the day of , A.D. 18 , at o'clock of that day, being the time and place appointed by the said arbitrator for a meeting upon the said reference, to give evidence in the above cause on behalf of the above-named [and then and there to have and produce (*state the particular documents required*) and all other papers relating to the said action in your custody, possession, and power].

Given under the seal of the court this day of , A.D. 18 .

X.... Y....,
Clerk.

To

60. ATTACHMENT AGAINST AN ABSCONDING OR REMOVING DEBTOR.

To A.... B...., Bailiff of the Division Court, in the County of (*or* to A.... B...., a constable of the County of , *as the case may be*) :—

You are hereby commanded to attach, seize, take, and safely keep all the personal estate and effects of C.... D.... (*naming the debtor*), an absconding, removing, or concealed debtor, of what nature or kind soever, liable to seizure under execution for debt within the County of (*here name the county*), or a sufficient portion thereof to secure A.... B.... (*here name the creditor*) for the sum of (*here state the amount sworn to be due*), together with the costs of his suit thereupon, and to return this warrant, together with an inventory and appraisement of such property as you shall have attached, to the clerk of the (*here state the number of the division*) Division Court in the county aforesaid forthwith; and herein fail not.

Witness my hand and seal (*or* the seal of the said court) the day of , one thousand eight hundred and .

Seal.

X.... Y....,
Clerk (*or* Justice of the Peace, *as the case may be*).

REPLEVIN.

61. AFFIDAVIT TO OBTAIN JUDGE'S ORDER FOR WRIT OF REPLEVIN.

In the Division Court, in the County of

County of
To wit : } I, A.... B...., of , make oath and say :—

1. That I am the owner of (*describe property fully*) at present in the possession of C.... D....; or that I am entitled to the immediate possession of (*describe property*) as lessee (bailiff *or* agent) of E.... F...., the owner thereof (*or* as trustee for E.... F....) (*or as the case may be*), at present in the possession of C.... D....

2. That the said goods, chattels, and personal property are of the value of dollars, and not exceeding sixty dollars.

3. That on or about the day of the said goods, chattels, and personal property were lent to the said C.... D.... for a period which has expired, and that although the said goods, chattels, and personal property have been duly demanded from the said C.... D.... he wrongfully withholds and detains the same from me, the said A.... B....; *or*, that on or about the day of the said C.... D.... fraudulently obtained possession of the said goods, chattels, and personal property by falsely representing that (*here state the false representation*), and now wrongfully withholds and detains the same from me; *or*, that the said goods, chattels, and personal property were on the day of distrained or taken by the said C.... D.... under color of a distress for rent, alleged to be due by me to one E....F...., when, in fact, no rent was due by me to the said E....F.... (*or, as the case may be, setting out the facts of the wrongful taking or detention complained of with certainty and precision*).

4. That the said C.... D.... resides (*or* carries on business) at , within the limits of the Division Court, in the County of (*or* that the said goods, chattels, and personal property were distrained) (*or* taken and detained) (*or* detained) at , within the limits of the Division Court in the County of .

Sworn, etc.

62. Affidavit to Obtain Writ of Replevin without Judge's Order in the First Instance.

The first four sections may be as in last form, except that the third section must show that the property was wrongfully taken out of the possession of the claimant, or was fraudulently got out of his possession, and it will not be sufficient to show merely a wrongful detention of the property, and the following must be stated in addition :—

5. That the said personal property was wrongfully taken (*or* fraudulently got) out of my possession within two calendar months before the making of this affidavit, that is to say, on the day of last.

6. I am advised and believe that I am entitled to an order for the writ of replevin now applied for, and I have good reason to apprehend, and do apprehend, that unless the said writ is issued without waiting for an order the delay will materially prejudice my just rights in respect to the said property (*or* if the property was distrained for rent or damage feasant, the statement given in the last specific alternative under the 3rd clause of the above form will be sufficient to obtain the writ without order).

---

63. Claim in Replevin.

No. , A.D. 18 .

In the Division Court, in the County of

A... B...., of , states that C.... D. .., of , did on or about the day of , A.D. 18 , take and unjustly detain (*or* detain, *as the case may be*), and still doth detain his goods, chattels, and personal property, that is to say : (*here set out the description of property*), which the said A.... B ... alleges to be of the value of dollars, whereon he hath sustained damages, and the said A.... B.... claims the said property with damages on this behalf, as his just remedy.

A.... B....

---

64. Summons in Replevin.

No. , A.D. 18 .

In the Division Court, in the County of

{ Seal. }

To Henry McPhall, the Bailiff of the said court, and to John Nokes :—

You, the said bailiff, are commanded that without delay you do take the security required by law and cause to be replevied to Henry Bray his goods, chattels, and personal property following, that is to say : (*here set out the description of the property as in the affidavit filed*), which the said Henry Bray alleges to be of the value of $ (*here set out value as in the affidavit filed*), in order that the said Henry Bray may have his just remedy in that behalf.

And you, the said John Nokes, are hereby required to take notice that a statement of the claim of the said Henry Bray is hereto annexed, and that unless within days after the service of this summons on you, you enter with the clerk of this court a notice in writing that you intend to dispute the claim, it will be considered that you have no defence, and the said Henry Bray may either cause judgment to be entered against you by default for $2

and costs, or may, at the sitting of this court to be held at next, after the expiration of days from the time this summons is served on you, proceed in the action in the same manner as if you had appeared and had admitted his right to the possession of the goods.

The days of sittings of the court are set forth below.

Given under the seal of the court the day of , 18 .

DAVID B. JONES,
Clerk.

Claim for return of goods and damages. $
Costs, exclusive of mileage..... $

WARNING.

If you claim a right to the possession of the goods by reason of any claim which you may have to urge under any statute, or to take the benefit of any statute of limitations or other statute, notice thereof in writing must, not less than five days before the day on which the case will be tried, be left in the office of the clerk of the court and given to the said plaintiff, or left at his usual place of abode, if living within the division, and in case the said plaintiff does not reside within the division such notice shall be left with the clerk for him.

Ensuing sittings of the court will be held as follows, viz. :—

At 10 o'clock a.m.—

Tuesday, the 9th day of January, 18 .
Tuesday, the 6th day of March, 18 .

(Here may be inserted the time of one or more subsequent sittings.)

Add memorandum (Form 51),

Endorse notice, under section 98 (No. 48).

---

65. Replevin Bond.

Know all men by these presents that we, Henry Bray, of, etc., Robert Leslie, of, etc., and Horace Kilborn, of, etc., are jointly and severally held and bound to Henry McPhall, Bailiff of the Division Court, in the County of , in the sum of $, to be paid to the said bailiff or his certain attorney, executors, administrators or assigns, for which payment, to be well and truly made, we bind ourselves, and each and every of us in the whole, our and each, and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this day of , A.D. 18 .

The condition of this obligation is such that if the above bounden Henry Bray do prosecute his suit with effect, and without delay, against John Nokes for the taking and unjustly detaining (*or* unjustly detaining, *as the case may be*) of his cattle, goods, and chattels, to wit: (*here set forth the property distrained, taken or detained*), and do make a return of the said property, if a return thereof shall be adjudged, and also do pay such damages as the said John Nokes shall sustain by reason of the issuing of the writ of replevin, if the said Henry Bray fails to recover judgment in the suit (*if the goods were not taken under distress for rent or damage feasant, and if the case comes under the provisions of Rule No. , here insert :* and shall also indemnify and save harmless the said John Nokes from all loss and damages which he may sustain by reason of the seizure and of any deterioration of the property in the meantime, in the event of its being returned, and all costs, charges, and expenses which the said John Nokes may incur), and further to observe, keep, and perform all orders made by the judge in the suit; then this obligation shall be void, or else remain in full force and effect.

Signed, sealed, and delivered in the presence of } (L. S.) (L. S.) (L. S.)

66. FORM OF ASSIGNMENT TO BE ENDORSED, IF REQUIRED.

Know all men by these presents that I, Henry McPhall, Bailiff of the Division Court, in the Count of , have, at the request of the within-named John Nokes (*the defendant*), assigned over this replevin bond unto the said John Nokes, pursuant to the rule in such case made and provided.

In witness whereof I have hereunto set my hand and seal this day of , A.D. 18 .

Signed, sealed, and delivered in the presence of } { Seal. }

---

67. BAILIFF'S RETURN TO WRIT OF REPLEVIN.

In the Division Court, in the Count of

Between HENRY BRAY, *Plaintiff*,
and
JOHN NOKES, *Defendant*.

In pursuance of the Division Court Rules in that behalf, I have taken from the said plaintiff a bond conditioned as by the said rules required, made by him, and two sureties, namely, Robert Leslie, of the Village of Kemptville, in the County of Grenville and Province of Ontario, Esquire, and Horace Kilborn, of the Village of Newboro', in the County of Leeds and Province of Ontario, Esquire, which bond bears date the day of , 18 , and is witnessed by Samuel McCammon, of the Town of Gananoque, in the County of Leeds, Esquire. And by virtue of the annexed writ to me directed, I have seized and delivered to the plaintiff the goods mentioned in said writ, that is to say: (*here describe the goods by number, quantity and quality*); [*or if only a part had been replevied, say*, a portion of the goods in the said writ mentioned, that is to say: (*here describe them*), and I cannot make replevin of the residue of said goods, namely (*shortly describe them*), as by said writ commanded, by reason of the same having been removed or carried out of this county by the defendant (*or as the case may be*)].

Dated the day of , 189 .

HENRY McPHALL,
Bailiff.

---

68. INVENTORY OF GOODS REPLEVIED.

In the Division Court, in the Count of

Between HENRY BRAY, *Plaintiff*,
and
JOHN NOKES, *Defendant*.

An inventory of property and effects by me this day replevied in the Township of Elizabethtown, in the County of Leeds, by virtue of a writ of replevin, issued by David B. Jones, Clerk of the Division Court in the Count of , on behalf of the plaintiff against the defendant, that is to say: (*here state all the articles replevied*).

Dated the day of , 18 .

Bailiff.

69. WRIT IN REPRISAL.

(*Capias in Withernam.*)

No. , A.D. 18 .

In the Division Court, in the Count of

Between HERNY BRAY, *Plaintiff*,
and
JOHN NOKES, *Defendant*.

{ Seal. }

To Henry McPhall, Bailiff of the said court :—

Upon application of the plaintiff, and it appearing by your return to the writ of replevin issued herein on the day of , 18 , that the goods, chattels, and personal property (*or* a portion of the goods, chattels, and personal property, *as the case may be*) mentioned in the said writ had been removed or carried (*eloigned*) by the defendant out of this county so that you could not make replevin of the same;

You are now hereby commanded that, without delay, you do take in withernam (in reprisal) the goods, chattels, and personal property of the said defendant in this county, to the value of the goods, chattels, and personal property by the said defendant before taken, and do forthwith deliver them to the said plaintiff, to be kept by him until the said defendant delivers the goods, chattels, and personal property last aforesaid to the said plaintiff.

And you are hereby further commanded that if the said plaintiff shall give security to you, as provided by law, for the prosecution of the plaintiff's claims and for the return of the goods, chattels, and property, so to be taken in withernam, as aforesaid, if the return thereof shall be adjudged, then that you, the said bailiff, do take security with two sufficient sureties from the said defendant to answer to the said plaintiff for the taking and unjustly detaining of his goods, chattels, and personal property aforesaid.

And you are hereby further commanded forthwith to make return to the clerk of this court what you shall have done in the premises, and do also return this writ.

Given under the seal of the court the day of , 18 .

DAVID B. JONES,
Clerk.

GARNISHEES.

70. SUMMONS TO GARNISHEE AND PRIMARY DEBTOR AFTER JUDGMENT.

No. , A.D. 18 .

In Division Court, in the County of

{ Seal. }

Between ABRAHAM BERNER, *Primary Creditor*,
and
CHARLES DOOLITTLE, *Primary Debtor*,
and
EMERY WHEELER, *Garnishee*.

Judgment recovered on the day of , A.D. 18 , in the Division Court in the County of . Amount unsatisfied, $.

You, the above-named garnishee, and the primary debtor, are hereby summoned to appear at the sittings of this court, to be held at , in the said county, next after the expiration of days from the time this sum-

mons is served on you, to state and to show whether or not you, the said garnishee, owe any, and what, debt to the above-named primary debtor, and why you should not pay the same into court, to the extent due on the above-named judgment, to satisfy the same ;

And you, the said garnishee, are hereby notified that, from and after the time of the service of this summons on you, all debts due or accruing due from you to the above-named C.... D.... are attached, and if you pay the same to any one other than to the person holding the proper order to receive the same, or into court, you will be liable to repay it, in case the court or judge so order.

And you, the said primary debtor, and garnishee, are hereby, severally, required to take notice that if any or either of you desires to set up any statutory or other defence, or any set-off, or to admit any liability of any or either of you, in whole or in part, for the amount claimed in this action, you must file with the clerk of this court the particulars of such defence or set-off, or an admission of the amount due or owing by any or either of you (*as the case may be*), within eight days after service on you, respectively, of this summons. In the absence of any notice of such defence or set-off, the judge may, in his discretion, give judgment against you, or either of you.

You, or any one interested, may also show any other cause why the said debt should not go to satisfy the said judgment.

The sittings of the court are set forth below.

Given, etc. (close as in form 47).

NOTICES AND WARNING TO GARNISHEE AND PRIMARY DEBTOR.

No. 1. The primary debtor, the garnishee, and all other parties in any way interested or to be affected by this proceeding, are entitled to set up any defence, set-off, or counterclaim, as between the primary creditor and the primary debtor, which the latter would be entitled to set up in an ordinary action, and also any defence, set-off, or counterclaim as between the garnishee and primary debtor; and may also show any other just cause why the debt sought to be garnished should not be paid over or applied in or towards satisfaction of the claim of the primary creditor.

Nos. 2, 3, 4, and 5. Add warnings numbered 3, 4, 5, and 6, as shown in form 47.

No. 6. Endorse notice as directed by section 98 as in form 48.

No. 7. Memorandum in form 71, as required by section 177, in cases where debt sought to be garnished is for wages or salary, to be added here, unless included in particulars of claim.

---

71. MEMORANDUM UNDER SECTION 177 OF THE DIVISION COURTS ACT IN A GARNISHEE SUMMONS.

(1) The primary debtor resides at the City of Hamilton, in the Province of Ontario, and his occupation in the service of the garnishees is that of an engine driver (*or as the case may be*) on the railway of the garnishees (the Grand Trunk Railway Company of Canada), and is occupied as such on said railway between the cities of Toronto and Hamilton (*or as the case may be*).

(2) The debt alleged (*or*, if after judgment, "adjudged") to be due by the primary debtor to the primary creditor was incurred for board or lodging.

72. Summons to Primary Debtor (before Judgment) and Garnishee.

(*Insert Title of Court and Style of Cause as in Form* 46.)

No. , 18 .

{ Seal. }

The primary creditor claims from the primary debtor the amount of the annexed account.

You, the above-named primary debtor, are hereby summoned to appear at the sittings of this court, to be held at the Court House, in the City of St. Thomas, in the said County of Elgin, next after the expiration of days from the time this summons is served on you, at the hour of o'clock in the forenoon, to answer the primary creditor, who sues you for the recovery of the annexed claim; and you, the garnishee, are required to appear at the same time and place to state and show whether or not you owe any and what debt to the primary debtor , and why you should not pay the same into court, to the extent of the primary creditor's claim, in satisfaction thereof; and take notice that if any or either of you desire to set up any statutory or other defence, or any set-off, or to admit the liability of any or either of you in whole or in part for the amount claimed in this action, you shall file with the clerk of this court the particulars of such defence or set-off, or an admission of the amount due and owing by any or either of you, within eight days after service on you, respectively, of this summons. You and all others interested may also show any other cause why the debt owing from the garnishee should not be paid and applied to satisfy the said claim of the primary creditor.

The sittings of the court are set forth below.

Given under the seal of the court the day of , A.D. 189 .

ALEX. McBRIDE,
Clerk.

Claim. .....$
Costs of summons, exclusive of mileage, $

Warning to Garnishee.

To the above-named Garnishee :—

You are hereby notified that from and after the time of the service of this summons on you all debts due or accruing due from you to the above-named primary debtor

are attached, and if you pay the same to any other than to the person holding the proper order to receive the same, or into court, you will be liable to repay it, in case the court or judge so order.

Warning to Primary Debtor and Garnishee.

Here add notices, warnings, and endorsements, as required by form 70, and days of sittings of court.

73. Judge's Attaching Order.

In the Division Court, in the County of

Between A.... B...., *Plaintiff*, and C.... D...., *Defendant*. } Judgment entered in the Division Court, in the County of , on the day of , A.D. 18 .

Amount unsatisfied, $

On application of the plaintiff, and upon reading his affidavit [*or* the affidavit of A.... B...., his solicitor (*or* "agent," *as the case may be*)], it is ordered that all debts now owing to the defendant from E.... F...., or from any party in this province, whether due, or accruing due, be and the same are hereby attached to satisfy the judgment in this cause.

Dated the day of , A D. 18 .

....
Judge.

Add warning as in next form.

73*a*. Warning to Garnishee.

To E.... F.... and all others, Garnishees :—

You are hereby notified that from and after the time of the service of this order on you all debts due, or accruing due, from you to the above-named C.... D.... are attached, and if you pay the same to any one other than to the person holding the proper order to receive the same, or into court, you will be liable to repay it, in case the court or judge so order.

73*b*. Clerk's Memorandum of Non-Appearance of Garnishee.

(*Under Consolidated Rule of Supreme Court of Judicature*, No. 943.)

Memorandum.

I, X.... Y...., Clerk of the Division Court in the within order named, attended this day of , 18 , at the place within mentioned, from o'clock in the noon (*as the case may be*) till past in the noon (*as the case may be*) of the same day, and the said J.... K.... (*garnishee*) did not appear before me according to the said order.

X....Y ....,
Clerk.

MEMORANDUM OF ADMISSION OF DEBT, WHEN SIGNED BY GARNISHEE.

Memorandum.

On this day of , 18 , the within named (*garnishee*) appeared before me according to the within order,* and admitted that he was and is indebted to the within-named G.H. (*judgment debtor*) in the sum of $ (*if the whole debt be not admitted*, add, "and no more"). (*If the garnishee be willing to sign the admission*, add, "and signed the subjoined admission in my presence.")

X.... Y.... ,
Clerk.

I, J.... K...., the within named, admit that there is a debt of $ (*if the whole debt be not admitted*, add, "and no more") due from me to the within named (*judgment debtor*).

J.... K...., (*Garnishee signature.*)

MEMORANDUM, WHERE GARNISHEE DENIES DEBT.

On, etc., (as in previous form to the asterisk*), and disputes the debt claimed to be due from him to the within named

(*Judgment debtor.*)

(*If the garnishee be willing to sign the denial of debt*, add, "and signed the subjoined denial of debt in my presence.")

X.... Y....

I dispute the debt claimed to be due from me to within named.

J.. . K...., (*Garnishee signature.*)

---

74. FORM OF AFFIDAVIT OF SERVICE OF GARNISHEE SUMMONS AFTER JUDGMENT ON THE AGENT OF A BODY CORPORATE UNDER SECTION 182 OF THE ACT.

(*Title of Court and Style of Cause.*)

I, A.... B...., of , etc., make oath and say as follows:—

1. That I did on the day of , 18 , duly serve G.... H.... with a true copy of the within (*or* annexed) summons, notices, memorandum, or warnings therein and thereon, in this cause, by delivering the same to the said G.... H.... personally.

2. That at the time of such service the said G.... H.... was the agent of the above-named garnishees at (*name of place*), and that at the said time he as such agent had an office at (*name of place*), that such office was at the time of said service within the limits of the Division Court of the County of , and that I necessarily travelled miles to make such service.

Sworn, etc.

---

75. FORM OF AFFIDAVIT OF SERVICE OF GARNISHEE SUMMONS BEFORE JUDGMENT ON THE AGENT OF A BODY CORPORATE UNDER SECTION 185, SUB-SECTION 2.

(*Commence as in form* 74 *to end of paragraph* 1).

2. That at the time of such service the said G.... H.... was the agent of the above-named garnishees at (*name of place*), and that at the said time he, as such agent, had an office at (*name of place*), and that I necessarily travelled miles to make such service.

Sworn, etc.

76. Bond under Section 196.

(*Commencement and conclusion same as in replevin bond, except that the bond must be to the clerk by his name of office, conditioned as follows :*)

Whereas, in a certain garnishee proceeding under The Division Courts Act, wherein the said A.... B.... is primary creditor, C.... D.... primary debtor, and E.... F.... garnishee, a certain debt of $, due from the garnishee to the primary debtor, has been garnished to answer the debt of the primary creditor; and whereas the judge of the said court, acting under the 196th section of the said Act, ordered that upon payment of the said debt by the garnishee to the primary creditor security should be given by or on behalf of the primary creditor for the repayment thereof into court by the primary creditor: Now the condition of this obligation is such that if the above-bounden A.... B.... do pay into court the said debt, in case a proper order shall be made for such repayment, within five days after notice of such order, then this obligation to be void, else to remain in full force.
(Close as in replevin bond, form 65.)

MINUTES OF JUDGMENT IN PROCEDURE BOOK.

77. Of Judgment against Defendant for Debt or Damages.

Judgment for the plaintiff * for $ and $ costs; to be paid in days (*when an excess has been abandoned, add,* being "in full discharge of his cause of action set forth in the claim").

**Add,* "On verdict by jury," *if such be the fact.*

---

78. Of Judgment under Section 109 of the Act.

The defendant, having been served with "Special Summons," and particulars of claim, and not disputing same (*or* "not disputing $ part thereof), it is adjudged that plaintiff recover $ for debt, and $ costs.

R. ROE,
Clerk.

Dated the day of , 18 .

---

79. Order for Immediate Judgment under Section 111.

Upon hearing and upon reading the affidavit of filed and

It is ordered that the plaintiff be at liberty to have the clerk of this court enter, and the clerk is hereby empowered to enter, final judgment in favor of the plaintiff against the defendant *(for the amount of the plaintiff's debt, *or* money demand) sought to be recovered in this action, as appears by the particulars of claim, endorsed on (*or* attached to) the special summons herein, with interest (*if any*), and costs to be taxed.

Dated the day of , 18 .

Judge.

*If desired, the amount for which judgment is to be signed may be stated here instead of words in brackets.

80. Judgment under Section 111.

Commence as in form 78 to the words "claim" inclusive, then proceed: And disputing same (*or* some part thereof, *as the case may be*), and the plaintiff having made application to the judge for an order for judgment, as provided by section 111 of the Act, and upon due notice to the defendant, the judge, on the day of , A.D. 18 , made an order empowering the clerk to sign final judgment herein for the amount of the debt (*or* money demand) set forth in the said particulars, together with interest and costs, it is adjudged, etc. (*Conclude as in form* 78.)

---

81. Of Judgment where some Defendants have been Served with Special Summons, and others have Confessed.

The defendant, C.... D...., having been served with special summons and particulars of claim, and not disputing $ part thereof, and the defendants E.... F.... and G.... H.... having confessed the same as due to the plaintiff, it is adjudged that the plaintiff recover $ for debt, and $ for costs.

---

82. Of Judgment of Non-Suit or Dismissal for Want of Prosecution.

Judgment of non-suit, "*or* that the cause be dismissed" (*if costs, etc., ordered, add*, "and the plaintiff pay $ for defendant's costs," *or* $ for defendant's trouble and attendance, and $ for his costs, to be paid in days).

---

83. Of Judgment on Award.

Judgment for the plaintiff (*or* defendant) for the sum of $ and $ costs (*or* for the sum of $ costs), pursuant to award, to be paid in days.

---

84. Of Judgment for Defendant.

Judgment for the defendant* (*or* for the defendant for $ costs; *or* $ for his trouble and attendance, and also $ for his costs, to be paid forthwith).

**Add*, "On verdict by jury," *if such be the fact.*

---

85. Of Judgment for Defendant on Set-Off, Where Set-Off in Part Satisfied.

It appearing that the defendant's set-off exceeds the plaintiff's claim, as proved, by over $100, it is adjudged that the plaintiff's claim, proved at $, be discharged, and that the defendant's set-off to $ be satisfied, and, further, that the defendant do recover against the plaintiff $ for his costs, to be paid in days.

86. Of Judgment for Defendant for Balance of Set-off.

It appearing that the defendant's set-off exceeds the plaintiff's claim, it is adjudged that the plaintiff's claim, proved at $, be discharged, and that the said set-off as to that amount be satisfied, and, further, that as to $, residue of such set-off, the defendant have judgment for the same, together with $ for his costs, to be paid in days

---

87. Judgment in Case of Counterclaim.

It is adjudged that the plaintiff do recover against the defendant the sum of for debt (*or* damages), and $ for costs, amounting together to the sum of $, and that the defendant, on his counterclaim, do recover against the plaintiff the sum of $ for debt (*or* damages, *as the case may be*), and $ for costs, amounting together to the sum of $, and that the said sums be set off one against the other, and that the do recover from the the sum of $ (being the difference between said sums), to be paid in days.

---

88. Forms of Judgments against Married Woman.

(*a*) In respect of liabilities incurred, whether for costs or otherwise, during marriage.

It is adjudged that the plaintiff (*or* defendant) do recover $ and costs against the defendant (*or* plaintiff); such sum and costs to be payable out of her separate property, as hereinafter mentioned, and not otherwise. And it is ordered that execution hereon be limited to the separate property of the defendant (*or* plaintiff), B.... A...., not subject to any restriction against anticipation, unless by reason of The Married Woman's Property Act the property shall be liable to execution notwithstanding such restriction.

(*b*) Where the judgment s recovered in respect of a debt contracted by her before marriage.

It is adjudged that the plaintiff do recover the sum of $ and costs against the defendant, A.... B...., such sum and costs to be payable out of her separate property, whether subject to any restriction against anticipation or not, and not otherwise.

---

89. Judgment for Costs under Section 209 of the Act.

The defendant having disputed the plaintiff's claim—but afterwards, before the opening of the court to which he was summoned, confessed judgment—(*or* paid the claim) so short a time before the sitting of the court that the plaintiff could not, in the ordinary way, be notified thereof—and the plaintiff having *bona fide* and reasonably incurred $ expenses in procuring witnesses to attend the court to prove his case (*or* in attending at court);

It is therefore adjudged and ordered that the defendant do pay the said plaintiff the sum of $ for such costs.

90. ENTRY OF JUDGMENT FOR DEFENDANT'S COSTS UNDER RULE 252*a*.

The plaintiff being desirous of not proceeding in this cause, but failing to give notice thereof and pay defendant's costs, and not proceeding to trial at a court holden this day, the defendant having applied for his costs (*or* the cause not being withdrawn until after the opening of court), it is adjudged that the defendant do recover against the plaintiff the sum of $ for costs incurred in preparing for trial (*or* in attending court) before notice of such withdrawal, and for costs of his defence.

---

91. MINUTE OF JUDGMENT FOR CLERK WHEN JUDGMENT POSTPONED.

In the Division Court, in the County of

Between A.... B...., *Plaintiff*,
and
C.... D...., *Defendant*.

At the sittings of this court, held on the day of , 18 , at , in the said division, this case came on to be heard, and after the hearing thereof by the judge in open court the giving judgment thereupon was postponed by the judge till the day of , 18 , at the hour of , at the office of the clerk of this court; the case having since been maturely considered by the judge, it is adjudged, etc. (*according to judgment*).

The clerk will read this decision to the parties or their agents, if present, and forthwith enter judgment according to the statute in that behalf.

Dated, etc.

.....,
Judge.

---

92. FORM OF JUDGMENT AGAINST A FIRM, ETC.

Judgment for the plaintiff against the said firm of A.... B.... & Co., and also against O.... P...., the partner thereof served with a copy of summons herein, and who has failed to appear (and also against R.... S...., who has admitted in the notice of dispute or defence filed that he is, or who has been adjudged a partner of the said firm), for $, and $ costs, to be paid forthwith (*or as the case may be*).

---

93. OF ORDER FOR IMPOSITION OF FINE FOR CONTEMPT.

It is adjudged that E.... F...., at the sittings of this court now holden, in open court, is guilty of a contempt of the said court, by wilfully insulting , judge (*or* deputy *or* acting judge) of the said court (*or* "in view of the court, by wilfully insulting , clerk (*or* bailiff) of the said court, during his attendance at such court") (*or* "by wilfully interrupting the proceedings of the said court"); and it is ordered that the said E.... F.... forthwith pay a fine of $ for such offence, and, in default of immediate payment, be committed to the common gaol of this county for days, unless such fine, the costs herein, and the expense attending the commitment be sooner paid.

94. Of Imposition of Fine on a Juror for Non-Attendance.

Adjudged that G.... H.... was duly summoned to attend this court, now holden, as a juror, that he hath wilfully neglected (*or* refused) to attend the court in obedience to the summons, and that he do within days (*or* forthwith) pay a fine of $.

---

95 Entry in the Procedure Book under The Creditors' Relief Act, Where There is a Judgment.

The plaintiff (*or* defendant), as a creditor of the defendant (*or* plaintiff), having served upon the sheriff of the County of a memorandum of the amount of this judgment under The Creditors' Relief Act, under which proceedings were taken against the defendant (*or* plaintiff) for the recovery thereof, and because the same was not paid in full (*where part of the judgment has been paid through those proceedings or otherwise, here state it thus*), but $, part thereof, having been paid, the said sheriff hath returned as follows (*here state the return*), and because he was unable to make the residue (*or* the money thereon) satisfaction is entered for the sum of $, part thereof (*if no part was recovered, leave out the words* "satisfaction is entered for the sum of $, part thereof"), and judgment is entered for the plaintiff (*or* defendant) for the sum of $, balance of the debt (*or* damages) and $ costs.

---

96. Judgment under The Creditors' Relief Act.

Where the proceedings were not upon a judgment or execution, but upon a certificate of claim.

Proceed, as in previous form, to the words "a memorandum," and thence as follows:—A certificate for a claim within the jurisdiction of this court, amounting to the sum of $ debt (*or* damages) and $ costs, under The Creditors' Relief Act, under which proceedings were taken for the recovery thereof against the defendant (*or* plaintiff), which not being paid in full, and the said sheriff, being unable to make the money thereon, returned the same under the provisions of the said Act, judgment is therefore entered for the plaintiff (*or* defendant) for $ debt and $ costs. (*If the sheriff has returned that he has made part, then the fact should be stated, and judgment should be entered for the residue only.*)

---

97. Order for Judgment without Plaintiff's Filing Note Sued on.

(*Title of Court and Style of Cause.*)

(Date, etc.)

Upon the application of the plaintiff, and upon reading the affidavit of , filed, it is ordered that the plaintiff be at liberty to have judgment entered in his favor in this action without his filing the note sued on herein, on his filing a true copy thereof with the clerk of the court.*

....., *Judge.*

*Provide for case of bond where note lost.

98. JUDGMENT AGAINST DEFENDANT ON CONFESSION BEFORE ACTION.

C....D...., being indebted to A.... B.... in the sum of $ for a debt, and having acknowledged the same in writing (with particulars attached thereto) before G.... L...., clerk (*or* bailiff) of this court, and the same being duly proved and produced to the judge, and the said A.... B.... requesting judgment thereon, it is adjudged that the said A.... B.... do recover against the said C....D.... the said sum of $ for debt, and $ for costs.

---

99. JUDGMENT ON CONFESSION AFTER ACTION.

The defendant having been served with summons and particulars of claim for a debt, amounting to $ (and the plaintiff having consented to take the defendant's acknowledgment for the sum of $, part thereof, and abandoned the residue; *or* having allowed the defendant's set-off thereout; *or* made certain deductions claimed therefrom), and the defendant having confessed the same (*or* $) in writing before G.... L...., clerk (*or* bailiff), and the confession being duly proved and produced.

(*Conclude as in the preceding form.*)

---

100. JUDGMENT WHERE EXECUTION POSTPONED BY CONSENT OF JUDGMENT CREDITOR BEYOND FIFTY DAYS.

Judgment* for the plaintiff for $ debt and $ for costs, to be paid as follows:—(*Here state the time when or the instalments by which the judgment is to be satisfied*), the plaintiff (*or* the party entitled to the same) having consented to this postponement.

(When an excess has been abandoned, or the defendant has paid money into court which has not been accepted, *add*, "Being in full discharge of his cause of action set forth in the claim.")

**Add*, "On verdict of jury," *if the cause was tried by the jury.*

---

101. ORDER TO SUSPEND ORDER, OR JUDGMENT, OR EXECUTION.

(*Insert title of Court and Style of Cause.*)

It is ordered that the judgment (*or* order) [*or* that the execution under the judgment (*or* order)] of this court in this action, bearing date the day of , A.D. 18 , be suspended until the day of , A.D. 18 .

Dated this day of , A.D. 18 .

... .,
Judge.

102. Order Postponing Execution or Judgment under Section 147.

(*Title of Court and Style of Cause.*)

Whereas the plaintiff obtained a judgment against the defendant in this court on the day of , 18 , for the payment of $ debt (*or* damages) and $ for costs , and the defendant was ordered to pay the same at a day now past (*if by instalments, specify them*), and it has been made to appear to the satisfaction of the judge by affidavit (*or* affirmation, *or* otherwise) that the defendant is unable from sickness (*or* other sufficient cause) to pay and discharge the debt (*or* damages) recovered against him (*or* any instalment thereof, if the same was ordered to be paid by instalments), so ordered to be paid, I do therefore order that the said judgment (*or* execution, *or* order, *as the case may be*) be stayed (*or* suspended) for (*here specify the time and terms upon which the order is granted*).

Dated this day of , 18 .

.....,
Judge.

---

103. Entry in the Procedure Book of Judge's Order for Executor or Administrator to Revive a Judgment.

On the day of , 18 , it was ordered by the judge that the plaintiff, as executor (*or* administrator), have execution against the defendant of a judgment of this court (*or* of the Division Court, etc.), whereby the said C.... D...., in his lifetime, on , recovered against the said defendant the sum of $, etc.

---

104. Entry of Order in Procedure Book that Judgment be Revived against an Executor or Administrator.

On the day of , 18 , it was ordered by the judge that the plaintiff have execution against the defendant, as executor (*or* administrator) of E.... F...., deceased, of a judgment of this court (*or* of the Division Court, etc.), whereby the plaintiff, on , recovered against the said E.... F...., in his lifetime, the sum of $, to be levied of the goods and chattels of the said deceased, in the hands of the said defendant to be administered.

---

105. Of Judgment against Executor or Administrator on Devastavit after Judgment.

Judgment that the defendant has wasted goods and chattels of A.... B...., deceased, to the sum of $, whereby a judgment recovered against him by the plaintiff in the Division Court, in the County of , on the day of , 18 , remains unsatisfied; and that the plaintiff now recover against the defendant the first-named sum, and also $ costs, to be paid in days.

106. OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR, WHO ADMITS HIS REPRESENTATIVE CHARACTER, AND THE PLAINTIFF'S DEMAND, BUT ALLEGES A TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND DOES NOT PROVE THE ADMINISTRATION.

Judgment for plaintiff for $ debt, and $ costs, to be paid in days; full (*or* partial) administration, which was alleged, and disputed, not having been proved. Ordered that the said sums be levied of the goods and chattels of the deceased; failing such goods, then the debt of the goods and chattels, hereafter to come to the defendant's hands to be administered, and the costs to be levied of the defendant's proper goods.

---

107. OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR, WHO ADMITS HIS REPRESENTATIVE CHARACTER, AND THE PLAINTIFF'S DEMAND, BUT ALLEGES A TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND PROVES THE ADMINISTRATION.

Judgment for the plaintiff for $, to be paid in days; to be levied of the goods and chattels of the deceased, hereafter to come to the defendant's hands to be administered; the debt not being denied, and full (*or* partial) administration, which was denied, having been proved. Ordered that the plaintiff pay $ for the defendant's costs in days.

---

108. OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR, WHERE THE DEFENDANT ADMITS HIS REPRESENTATIVE CHARACTER, BUT DENIES THE DEMAND, AND ALLEGES TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND THE PLAINTIFF PROVES HIS DEMAND, AND THE DEFENDANT DOES NOT PROVE ADMINISTRATION.

Judgment for plaintiff for $ for debt, and also $ costs, to be paid in days, to be levied of the goods and chattels of the deceased; failing such goods, then the said costs to be levied of the defendant's proper goods, and the debt to be levied of the goods and chattels of the deceased, hereafter to come to the defendant's hands to be administered, the plaintiff's demand having been proved, which was denied, and administration, which was alleged, not having been proved.

---

109. OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR, WHERE HE ADMITS HIS REPRESENTATIVE CHARACTER, BUT DENIES THE DEMAND, AND ALLEGES TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND THE PLAINTIFF PROVES HIS DEMAND, AND THE DEFENDANT PROVES ADMINISTRATION.

Judgment for the plaintiff for $ for debt, and also $ costs, to be paid in days; the plaintiff's demand, which was denied, having been proved, and full (*or* partial) administration also having been proved, which was denied, the said costs to be levied of the goods and chattels of the deceased; failing such goods, then of the defendant's proper goods; the said debt to be levied of the goods and chattels of the deceased, hereafter to come to the defendant's hands to be administered; and ordered that $, the costs of proving such administration, be paid by the plaintiff in days.

110. OF ORDINARY JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR.

Judgment for plaintiff for $, and $ costs, to be paid in days, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the defendant's proper goods and chattels.

---

111. OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR, WHO ADMITS HIS REPRESENTATIVE CHARACTER, AND DENIES THE DEMAND.

The same as in ordinary judgment against executor or administrator, form 110.

---

112. OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR, WHO HAS DENIED HIS REPRESENTATIVE CHARACTER, OR PLEADED A RELEASE TO HIMSELF.

The same as in ordinary judgment against executor or administrator, form 110.

---

113. OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR, WHO HAS WASTED ASSETS.

Judgment for plaintiff for $, and $ costs, to be paid in days, to be levied of the goods and chattels of the deceased; failing such goods, then the whole (*or* the sum of $ and the said costs) to be levied of the defendant's proper goods and chattels; the defendant having wasted the goods of the deceased to that amount.

---

114. MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST GARNISHEE, OR JUDGMENT ALREADY ENTERED.

Judgment entered on the day of in the Division Court, in the County of , year No. , 18 .

Amount unsatisfied, $

On hearing all parties [*or* on "hearing the above-named"] (*the parties appearing*), and upon proof of the debt, it is adjudged that the garnishee is indebted to the primary debtor in $ now due (*or* coming due as follows:), which (*or* $ of which) ought to be applied in satisfaction of the said judgment, and that the said primary creditor do recover the same against the garnishee, for levying whereof execution may issue days from this date , unless the garnishee shall sooner pay the same into court, to satisfy the said judgment.

Entered the day of , A.D. 18 .

115. MINUTE WHERE THE DEBT DUE BY THE GARNISHEE IS PAYABLE BY INSTALMENTS.

Same as above, from the words "primary debtor" $ inclusive, *and from thence proceed:* not now due, but payable by instalments as follows (*here state the instalments and when payable*), $ of which ought to be applied in satisfaction of the said judgment, and that the primary creditor do recover against the garnishee, by instalments of $, every (*here specify when payments ordered to be made*). The first of such instalments to be paid on the day of , 18 , unless, etc. (*Close as in the preceding form.*)

---

116. MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST PRIMARY DEBTOR AND AGAINST GARNISHEE.

On hearing all parties [*or* "on hearing the primary creditor (*or as the case is*), the primary debtor (*or as the case is*) having made default], it is adjudged, 1st, That the primary debtor is indebted to the primary creditor in $, and that he do pay the same and $ costs in days. 2nd, That the garnishee is indebted to the primary debtor in $, *which (*if the garnishee's debt be larger than the primary creditor's claim, say:* "to the extent of the two first-mentioned sums") ought to be applied in satisfaction thereof. 3rd, That the primary creditor do recover against the garnishee the said sum of $, to be paid in days (*as time may be given for payment of debt becomes due*), in satisfaction as aforesaid.

---

117. WHERE THE DEBT DUE BY THE GARNISHEE IS PAYABLE BY INSTALMENTS.

Same as in form 116 up to the asterisk *, from thence proceed: not now due, but payable by instalments as follows (*here state the instalments and when payable*), as in form 116 to the end.

---

118. WHERE THE GARNISHEE HAS SET UP DEFENCE WHICH HE KKEW TO BE UNTENABLE.

And inasmuch as the garnishee has set up a defence which he knew, or ought to have known, was untenable, it is adjudged that he do pay the costs of this proceeding, amounting to $, forthwith (*or* within days).

---

119. MINUTE OF JUDGMENT IN FAVOR OF GARNISHEE, PRIMARY DEBTOR, OR CLAIMANT.

On hearing all parties (*or* on hearing the garnishee, the primary creditor having made default), it is adjudged that the garnishee is not indebted to the primary debtor, as claimed by the primary creditor, and that the primary creditor pay the garnishee $ for his costs, to be paid in days.

120. JUDGMENT WHERE PRIMARY CREDITOR FAILS IN RECOVERY OR PROVING FOR CLAIM AND PROCEEDINGS HAVE BEEN CONTINUED AS BETWEEN THE PRIMARY DEBTOR AND THE GARNISHEE.

The primary creditor having failed to prove his claim against the primary debtor, or become non-suited, and upon hearing the matter in controversy between the primary debtor and the garnishee, it is adjudged that (*here follow any other form of judgment suitable to the case of an ordinary proceeding between plaintiff and defendant*), and it is ordered that the primary creditor do pay the primary debtor (*or* garnishee). (*Here state whatever the judgment may be as to costs or otherwise.*)

121. Judgment for the primary debtor (*or* for the garnishee, *or* for the third-party claimant) against the primary creditor for $ costs (*or* for $ for his trouble and attendance, and for his costs), to be paid forthwith (*or* within fourteen days).

122. It appearing that the set-off of the primary debtor exceeds the claim of the primary creditor, as proved, by over $100, it is adjudged that the claim of the primary creditor proved at be discharged, and that the set-off of the primary debtor to $ be satisfied; and, further, that the primary debtor do recover against the primary creditor $ for his costs, to be paid in days, and that the attachment of the debt garnished be discharged.

123. SUMMONS UNDER SECTION 197, WHERE A THIRD PARTY CLAIMS THE MONEY GARNISHED.

(*Title of Court and Style of Cause.*)

Upon reading the garnishee summons issued in this cause, and upon hearing the primary creditor [the primary debtor] and the garnishee;

It is ordered that the further hearing of the parties to the said summons herein do stand adjourned until the day of , A.D. 189 , at (*or* "the next sittings of this court"), and that G.... H...., who claims to be entitled to the said debt, the primary creditor, the primary debtor, and the garnishee, their solicitors or agents, attend before the presiding judge at the next sittings of this court at , on the day of , A.D. 189 , at o'clock in the noon of the same day (*or such other time as may be appointed*), and state the nature and particulars of their respective claims to such debt, and maintain or relinquish the same, and abide by such order as may by the said presiding judge be made herein, and that the costs of the adjournment and of this order be costs in the cause.

Dated, etc.

....., *Judge.*

JUDGMENTS IN REPLEVIN.

124. In Favor of Plaintiff.

Judgment for the plaintiff (*if case tried with a jury, add:* on verdict by jury) for $, and $ costs, to be paid in days.

---

125. In Favor of Defendant in Replevin for Rent.

Adjudged that the plaintiff do return to the defendant the goods and chattels (*or* cattle) (*stating the particulars*), and pay $ for costs in days [*or* adjudged that the amount due for rent in arrear from the plaintiff to the defendant is $, and that the goods and chattels (*or* cattle) were of the value of $, and that the plaintiff do in days pay the said sum of $ and also the sum of $ for costs of suit].

---

126. In Favor of Defendant in Replevin of Cattle, Damage Feasant.

Adjudged that the plaintiff do return to the defendant the cattle (*here specify the cattle*) or do pay in days the sum of $, which is adjudged as the amount of damage sustained by the defendant, and that the plaintiff do pay within days $ for costs.

---

127. In Favor of Defendant Where Replevin is Not for Rent or for Damage Feasant.

Adjudged that the plaintiff do return to the defendant the goods and chattels (*or* the cattle) (*stating the particulars thereof*) forthwith (*or* in days), and that the plaintiff do pay the defendant in days $ for costs of suit (*if damages be awarded, add:* and $ for damages sustained by the defendant).

DETINUE.

128. Judgment for Delivery of Goods.

It is adjudged that the plaintiff do recover against the defendant the following goods and chattels of the plaintiff wrongfully detained by the defendant, that is to say:—

(*Here enumerate the chattels which the court decides have been detained*) or $ their value, and also the sum of $ for damages, for their said detention, and the sum of $ for costs.

And it is ordered that the defendant do return the said goods to the plaintiff, or do pay the sum of $, their value, to the clerk of this court, on the day of , A.D. 18 .

And it is further ordered that the defendant do pay the said damages and costs, amounting together to the sum of $, to the clerk of the court, on the day of , A.D. 18 (*or* forthwith).

If the judge makes an order at the trial for a return of the goods and chattels without giving the defendant the option of returning them, omit the words in brackets and substitute the following:—

And it is ordered that the defendant do return the said goods and chattels to the plaintiff on the day of , A.D. 18 , and that in default of his so doing a warrant of delivery do issue.

---

129 Form of Judgment where Immediate Return is Ordered, with Damages and Costs.

It is adjudged that the defendant does unjustly detain the goods and chattels of the plaintiff, viz.: (*here enumerate and shortly describe the goods*), and it is ordered that the defendant do return the same to the plaintiff forthwith and that a warrant of delivery do issue therefor, and that the defendant do pay $ damages for the unjust detention thereof, and $ the costs of this suit, amounting together to the value of $, to the clerk forthwith, and in default of his so doing that execution do issue therefor immediately.

---

130. Order on Party to Pay Costs to Clerk, under Section 55.

(*Insert title of Court and Style of Cause, or Causes, if more than one.*)

Upon reading the summons herein granted on the day of , A.D. 18 , the affidavit filed, the affidavit of service thereof, and upon hearing the clerk of the said Division Court, and the said plaintiff (*or as the case may be*), I do order that the said do pay to the clerk of this court the sum of $ within days from this date, as the fees which should have been paid by him to the clerk of the court on the proceedings herein, and which now remain unpaid, together with the costs of this proceeding, and in the event of the said sum not being so paid it is further ordered that execution do issue against the goods and chattels of the said , or that the same be made and levied by such ways and means as any debt or damages ordered to be paid by the court may or can be recovered by process of the said court, and that an entry of this order be made in the procedure book.

Dated at this day of , 189 .

....., *Judge.*

131. APPEAL TO THE HIGH COURT.

Form of entry of judgment under section 152.

This case having been appealed to a judge of the Court of Appeal, who having ordered (*or* given direction) touching the decision (*or* judgment) to be given herein, judgment is therefore entered (*here state the short material provision of the order, as the case may be*), with costs to be paid, as ordered.

EXECUTIONS.

132. AGAINST GOODS OF DEFENDANT.

No. , A.D. 18 .

(*Insert title of Court and Style of Cause.*)

{ Seal. }

Whereas on the day of , A.D. 18 , the plaintiff duly recovered in said court judgment against the defendant for $ for debt (*or* damages), and $ for costs of suit, which remains unsatisfied (*when the judgment has been revived, add*, "and on the day of , A.D. 18 , the said judgment was duly revived"), you are hereby required to levy of the goods and chattels of the defendant, in the said County (not exempt from execution), the said moneys, amounting together to the sum of $, and your lawful fees; so that you may have the same within thirty days from the date hereof, and pay the same over to the clerk of this court for the plaintiff.

Given under the seal of the court this day of , A.D. 18 .

X.... Y....,
Clerk.

To V.... W....,
Bailiff of said Court.

Judgment..... $
Interest.....
Subsequent costs.....
This execution.....

Levy the sum of..... $, and your lawful fees upon this precept.

132*a*. In case several judgments have been recovered against an absconding debtor, and one execution is issued thereupon, in pursuance of rule 30, such execution should recite the several recoveries, with their respective amounts.

---

133. WARRANT OF EXECUTION WHERE ONE OF SEVERAL PLAINTIFFS HAS DIED AFTER JUDGMENT AND BEFORE EXECUTION.

Same in all respects as other warrant, except that the following may be inserted after the statement of the recovery of judgment:—

And whereas G.... R...., one of the plaintiffs, has died since judgment was given (*or* signed) and before execution executed.

134. AGAINST GOODS OF PLAINTIFF.

No. , A.D. 18 .

(*Insert title of Court and Style of Cause.*)

Seal.

Whereas on the day of , A.D. 18 , in said court, judgment was given for the defendant, and for $ costs (*or* judgment was given that plaintiff be non-suited; *or* that the action be dismissed, and that the plaintiff do pay the sum of $ to the defendant for his trouble and attendance, and $ for his costs, which remain unsatisfied)—(*here follow the last form of execution to end, transposing the words "plaintiff" and "defendant" where they occur*).

---

135. ON JUDGMENT FOR BALANCE OF SET-OFF.

No. , A.D. 189 .

(*Insert title of Court and Style of Cause.*)

Seal.

Whereas, at the sittings of this court, holden on the day of , A.D. 18 , it was adjudged that the above-named defendant should recover against the above-named plaintiff the sum of $, the residue of his set-off exceeding the plaintiff's claim, together with $, his costs of suit, which remains unsatisfied, you are hereby required (*conclude as directed in last form*).

---

136. FOR COUNTERCLAIM.

The same as the foregoing form, to the words "the residue" *inclusive, and proceed:* of his counterclaim (exceeding the plaintiff's claim) (*as the case may be*), together with $, his costs of defence, and of proving his said counterclaim (*or as the case may be*), which remains unsatisfied, etc. (*Conclude as directed in previous forms*).

---

137. EXECUTION UNDER SECTION 82, WHERE JUDGMENT OBTAINED AGAINST A DEFENDANT RESIDING IN A FOREIGN COUNTY.

No. , A.D. 18 .

(*Insert title of Court and Style of Cause.*)

Seal.

Whereas the place of sitting of this court is nearest to the defendant's residence, and at the sitting of the said court, holden on the day of , A.D. 18 , in and for the said division, by judgment of the said court the plaintiff recovered against the defendant, under the provisions of section 82 of The Division Courts Act, the sum of $ for debt, and $ for costs remaining unsatisfied, you are hereby required to levy of the goods and chattels of the defendant (not exempt from execution), in the said County of (*or* in the County of , where the defendant resides), the said moneys, etc. (*Conclude as in form* 132).

138. On Transcript of Judgment from one Division Court to Another.

No. , A.D. 18 .

(*Insert title of Court and Style of Cause.*)

{ Seal. }

Whereas on the day of , A.D. 18 , the plaintiff duly recovered in the Division Court, in the County of , judgment against the defendant for $ for debt, and $ for costs of suit (*if the judgment was revived, use the following words:* "and on the day of , A.D. 18 , the said judgment was duly revived"), as appears by a transcript of the entry of such judgment attested by the seal of the court, certified and signed by , the clerk thereof, and sent and addressed to the clerk of this Division Court, pursuant to the provisions of The Division Courts Act. And whereas it appears, by certificate of the first-mentioned clerk at the foot of the transcript, that the amount unpaid on the said judgment is $, which said transcript and certificate is duly entered in the book of this court, therefore you are hereby required, etc. (*Conclude as in form* 132).

---

139. For an Executor on Judgment Revived in His Favor.

No. , A.D. 18 .

(*Title of Court.*)

{ Seal. }

Between A.... B...., Executor of C.... D.... (*or* administrator), deceased, *Plaintiff*,

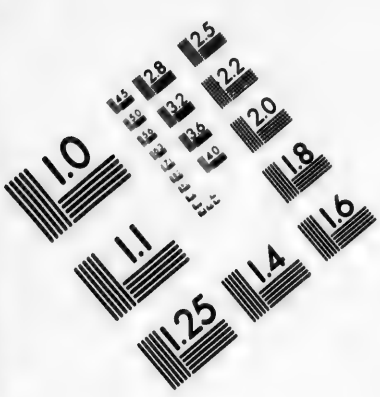
and

E.... F...., *Defendant*.

You are hereby required to levy of the goods and chattels of the defendant (not exempt from execution), in the said County of , the sum of $, which C.... D...., in his lifetime, in this court (*or* in the Division Court, etc.), on , recovered against the defendant for his debt (*or* damages) and costs (leave having on the day of A.D. , 18 , been given to the plaintiff or executor (*or* administrator) of the said C.... D.... to issue execution for the recovery thereof with costs), together with your lawful fees.

And you are further required to have that money within thirty days after the date hereof, and to pay the same over to the clerk of this court for the plaintiff.

(*Conclude as in other forms of executions.*)



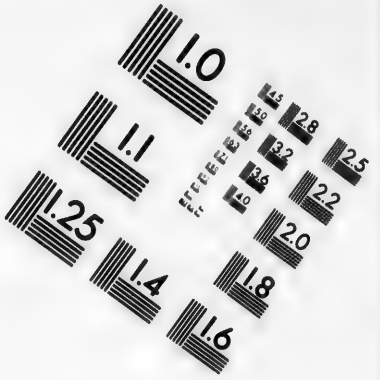
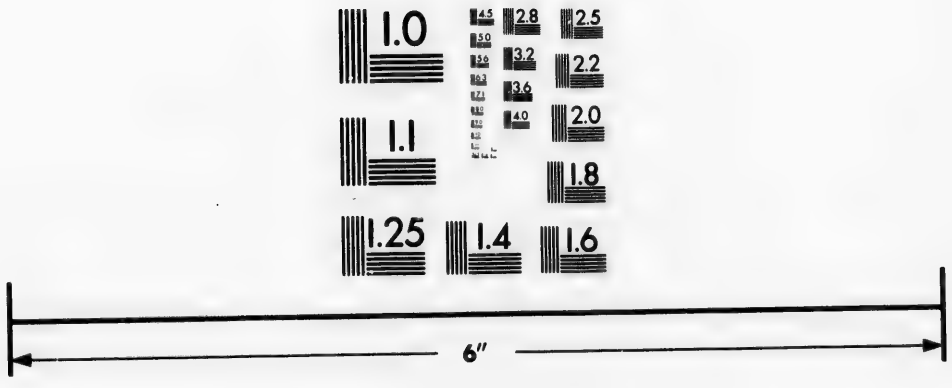
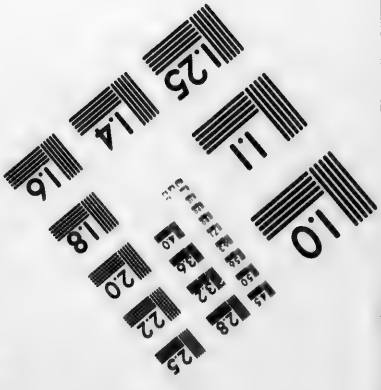


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

140. Of Judgment Revived against Executor or Administrator.

No. , A.D. 18 .

In the Division Court, in the County of

Between A.... B...., *Plaintiff*,

and

{ Seal. } C.... D...., Executor of E.... F...., deceased, *Defendant*.

You are hereby commanded (*or* as before, *or* as often before) to make and levy by distress and sale of the goods and chattels of E.... F...., deceased, in the County of (not exempt from execution), in the hands of the said defendant, as executor (*or* administrator), to be administered, the sum of $, which the plaintiff in this court (*or* in the Division Court, etc.), on , recovered against the said deceased in his lifetime for the plaintiff's debt (*or* damages) and costs, and whereof it was on ordered by the judge of this court (*or* of the Division Court, etc.) that the said plaintiff should have execution against the said defendant as executor (*or* administrator) of the said deceased, to be levied of the goods and chattels of the said deceased in the said defendant's hands to be administered, together with the costs of execution herein, and your lawful fees; so that you have the same within thirty days after the date hereof, and pay the same over to the clerk of this court for the plaintiff.

(*Conclude as in previous forms of executions.*)

N.B.—Executions upon the judgments in other causes against executors may be drawn from this form, with the requisite alterations.

---

141. Against Goods of Testator.

No. , A.D. 18 .

In the Division Court, in the County of

Between A.... B...., *Plaintiff*,

and

{ Seal. } C.... D...., Executor (*or* Administrator) of E.... F...., deceased, *Defendant*.

Whereas on the day of , A.D. 18 , the plaintiff duly recovered in the said court judgment against the said defendant as executor (*or* administrator) of E.... F...., deceased, the sum of $, for a certain debt, with $ for costs, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the defendant's proper goods and chattels, which said debt and costs were ordered to be paid at a day now past, and remain unsatisfied: These are therefore to command you forthwith to make the levy, by distress and sale of the goods and chattels, which were the property of the said E.... F.... in his lifetime, in the hands of the defendant to be administered in the County of (not exempt from execution), the said debt and costs, amounting together to the sum of $, together with the costs of this execution, if the defendant have so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then that you levy of the proper goods and chattels of the defendant, in the said County of (not exempt from execution), the said costs and your lawful fees, so that you may have the same within thirty days after the date hereof, and pay the same over to the clerk of this court for the plaintiff.

(*Conclude as in previous forms of executions.*)

142. FORM OF EXECUTION IN REPLEVIN AGAINST PLAINTIFF WHEN RETURN OF GOODS ADJUDGED WITH DAMAGES AND COSTS.

No. , A.D. 18 .

In the Division Court, in the County of

{ Seal. }

Between HENRY BRAY, *Plaintiff*,

and

JOHN NOKES, *Defendant*.

Upon hearing this action of replevin at a sitting of the court, holden at , in and for the said division, on the day of , 18 , it was adjudged that the plaintiff do return to the defendant the goods and chattels (*or* the cattle) (*stating the particulars thereof*) forthwith (*or* in days), and that the plaintiff do pay to the defendant in days $ for costs of suit (*if damages have been awarded, add,* "and also $ for damages sustained by the said defendant"), and the plaintiff has not returned to the said defendant the said goods and chattels (*or* the said cattle), or paid the said costs (*if damages have been awarded and have not been paid, add,* and damages), these are therefore to require and order that without delay you cause the said goods and chattels) (*or* the said cattle) to be returned to the defendant, and that you levy of the goods and chattels of the plaintiff, in the said County of (not exempt from execution), the said moneys, amounting together to the sum of $, and your lawful fees, so that you may have the same within thirty days after the date hereof, and pay the same over to the clerk of this court for the plaintiff.

And you are also required and ordered forthwith to make return to the clerk of this court of what you shall have done in and about returning the said goods and chattels (*or* the said cattle) to the defendant.

Given under the seal of the court this day of , 18 .

To Henry McPhall,
Bailiff of said Court.

DAVID B. JONES,
Clerk.

Judgment .....$
Interest.....
Subsequent costs.....
This execution.....

Levy the sum of..... $, besides your lawful fees on this precept.

143. EXECUTION ON ORDER FOR NON-PAYMENT OF FEES TO THE CLERK, UNDER SECTION 55.

(*Insert title of Court and Style of Cause as in summons as in form* 56.)

Whereas the fees upon the proceedings in this cause were not paid in the first instance by the plaintiff (*or* by X.... G...., the party on whose behalf the said proceedings were had) before such proceedings were taken and instituted, as required by section 54 of The Division Courts Act; and the payment thereof has been ordered by the judge, of which the said plaintiff (*or* A.... G....) has had due notice; the same having been duly demanded, and there being now due thereon the sum of $, which the said plaintiff (*or* X.... G....) has neglected to pay;

You are therefore ordered and required to levy of the goods and chattels of the said plaintiff (*or* X.... G....) (not exempt from execution) the sum of $ and your own fees, etc. (*Conclude as in other executions against plaintiff for costs.*)

....., *Judge.*

To Thomas Sturge,
Bailiff.

....., *Clerk.*

(*Mem. as in other executions.*)

GARNISHEE PROCEEDINGS.

144. Execution against Garnishee on Judgment Already Recorded.

In the Division Court, in the County of

Between A.... B...., *Primary Creditor*,
and
C.... D...., *Primary Debtor*,
and
E.... F...., *Garnishee*.

{Seal.}

Judgment recovered on the day of , A.D. 18 , in the Division Court in the County of
Amount unsatisfied $

Whereas on the day of , A.D. 189 , it was ordered that the garnishee should pay the primary creditor the sum of $ (*or, if by instalments, state the fact*), being the (*or* so much of the) amount of the debts found to be due from him to the primary debtor (*or* as is sufficient to satisfy the judgment of the primary creditor), and default having been made therein (*or* $, part thereof, being in default), according to the said order;

You are hereby required to levy of the goods and chattels of the garnishee, in the County of (not exempt from execution), $ so owing from him to the primary debtor, and ordered to be paid, and your lawful fees.

And what you shall have done, etc. (*Proceed the same as in ordinary executions.*)

---

145. Form of Execution Against Garnishee only, on a Claim not a Judgment, where no Judgment given Against Primary Debtor.

(*Title of Court and Style of Cause.*)

{Seal.}

Whereas at the sittings of this court held on the day of 18 , it was sufficiently proved that the sum of $ was and is due and owing for a debt (*or* money demand) over which this court had jurisdiction from the primary debtor to the primary creditor, and that the sum of $ was and is due and owing to the primary debtor from the garnishee (*or* E.... R...., one of the garnishees) for a debt (*or* money demand) over which this court had jurisdiction, and the primary creditor hath attached such last-mentioned debt from the garnishee (*or* E.... R...., one of the garnishees) (*or* sufficient thereof to satisfy his claim to the extent of $), and the garnishee was ordered to pay into court the sum of (*or* part of the sum) so due and owing by him to the primary debtor (*if by instalments, then state them*) to satisfy the claim of the primary creditor, and default having been made therein, you are hereby requested to levy, etc. (*Here proceed as in form* 144.)

146. EXECUTION AGAINST PRIMARY DEBTOR AND GARNISHEE.

No , A.D. 18 .

In the Division Court, in the County of

Between A.... B...., *Primary Creditor*,

and

Seal. C.... D...., *Primary Debtor*,

and

E.... F...., *Garnishee*.

Amount adjudged due from the primary debtor to the primary creditor the day of , A.D. 18 , for debts.....$

For costs.....$

Total debt and costs.....$

Amount adjudged to the primary creditor, for money owing from the garnishee, the day of , A.D. 18 , ...$

To V.... W...., Bailiff of the said court :—

You are hereby required to levy of the goods and chattels of the primary debtor, in the said County of K (not exempt from execution), $ above adjudged to be due to the primary creditor from the primary debtor, together with the costs of this precept, and your lawful fees in executing the same. And if so much goods and chattels of the primary debtor be not found in the said county as will satisfy the said judgment, then that you levy of the goods and chattels of the garnishee in the said county (not exempt from execution) (*or so much thereof as may be necessary to satisfy the said judgment*) money owing from the garnishee to the primary debtor, and which has been adjudged to the primary creditor, and your lawful fees, and what you shall have done herein return with this writ within thirty days after the date hereof.

(*Conclude as in other executions.*)

---

147. EXECUTION AGAINST GARNISHEE ON JUDGMENT RECOVERED AGAINST HIM AND PRIMARY DEBTOR.

In the Division Court, in the County of

Between A.... B...., *Primary Creditor*,

and

C.... D...., *Primary Debtor*,

Seal. and

E.... F...., *Garnishee*.

Amount adjudged due from the primary debtor to the primary creditor the day of , A.D. 18 , for debt.....$

For costs .....

Total sum.....$

Amount adjudged to the primary creditor, for money owing from the garnishee, the day of , A.D. 18 .....$

To V.... W...., Bailiff of the said court :—

You are hereby required to levy of the goods and chattels of the garnishee, in the said County of (not exempt from execution), $ money owing from him to the primary debtor, and which has been adjudged to the primary creditor, to satisfy his said claim against the primary debtor, and your lawful fees, and what you shall have done herein return with this writ within thirty days after the date hereof. (*Conclude as in other executions.*)

ATTACHMENT OF DEBTS.

148. EXECUTION AGAINST GARNISHEE FOR DEBT, AND ALSO FOR COSTS, UNDER SECTION 191.

(*Title of Court and Style of Cause.*)

Seal.

Amount adjudged due from the primary debtor to the primary creditor the day of , A.D. 18 , for debt.$
For costs .....

Total sum.....$
Amount adjudged to primary creditor for money owing from the garnishee the day of , A.D. 18 .....$

To V.... W...., Bailiff of the said court:—

You are hereby required to levy of the goods and chattels of the garnishee (not exempt from execution), in the said County of , $ money owing from him to the primary debtor; and inasmuch as the said garnishee set up a defence to the said claim which he knew (*or* ought to have known) was untenable, the judge ordered that he should pay the costs of the said proceeding, amounting to $. You are therefore further required to levy of the said goods and chattels of the said garnishee (not exempt as aforesaid) the said sum of $, to satisfy the said costs and your lawful fees, and what you shall have done herein return with this writ within thirty days after the date he.

Given under the seal of the court the day of , 18 .

N.... Y...., *Clerk.*

149. EXECUTION WHERE CLAIM MADE BY SOME ONE OTHER THAN THE PRIMARY CREDITOR OR PRIMARY DEBTOR, TO DEBT SOUGHT TO BE ATTACHED, AND JUDGE GIVES EFFECT TO CLAIM UNDER SECTION 197 OF ACT, WITH COSTS TO BE PAID TO CLAIMANT.

(*Insert title of Court and Style of Cause as in form* 144.)

Whereas, upon this cause coming on to be tried, and upon its being proved that a debt was owing from the garnishee to the primary debtor, it appeared that G.... H...., of , claimed to be entitled to the said debt by assignment thereof or otherwise.

And whereas the judge at the sittings of this court, holden at , in the said County of , upon the day of , A.D. 18 , having duly called the said G.... H...., and all other proper parties, before him by summons, for the purpose, as provided by the 197th section of The Division Courts Act, enquired into and decided upon the said claim,* and allowed and gave effect to it, and judgment was given that the primary creditor (*or as the case may be*) do pay to the said G.... H.... the sum of $ for his cost of so establishing his right to the said debt, which remains unpaid.

You are hereby required to levy of the goods and chattels of the said primary creditor (*or as the case may be*), in the said County of (not exempt from execution), the sum of $ for the said costs of the said G.... H.... in so establishing his right to the said debt, together with your lawful fees.

(*Proceed as in form* 132, *and conclude.*)

150. Execution where Claim made by some one other than the Primary Creditor or Primary Debtor, to Debt sought to be Attached, and Judge holds the Claim void as against the Primary Creditor under Section 197 of Act, with Costs to be paid by Claimant.

As in last form to asterisk, and then proceed :* and held the same void as against the primary creditor for being a fraud upon creditors (*or otherwise, stating the ground*), and judgment was given that the said G.... H.... do pay to the primary creditor the sum of $ for his costs of opposing the said claim, which remains unsatisfied.

You are hereby required to levy of the goods and chattels of the said G.... H...., in the said County of (not exempt from execution), the said sum of $ for the said costs of the said primary creditor in so opposing the said claim, together with your lawful fees.

(*Proceed as in form* 132, *and conclude.*)

---

151. For Garnishee's Costs.

No. , A.D. 18 .

In the Division Court, in the County of

Between A.... B...., *Primary Creditor*,
and
C.... D...., *Primary Debtor*,
and
E.... F...., *Garnishee.*

{ Seal. }

To V.... W...., Bailiff of the said court :—

Whereas, at the sittings of this court, holden on the day of 18 , at , it was adjudged that the garnishee was not indebted to the primary debtor, as claimed by the primary creditor, and judgment was given for the garnishee against the primary creditor for $ for his costs, to be paid at a day now past, and the primary creditor has not paid the same ;

You are hereby required to levy of the goods and chattels of the above-named primary creditor, in the said County of (not exempt from execution), $ for his said costs, together with the costs of this precept and your lawful fees in executing the same, and what you shall have done herein return with this writ within thirty days after the date hereof.

(*Conclude as in other executions.*)

152. EXECUTION UNDER RULE 943 OF THE CONSOLIDATED RULES OF THE SUPREME COURT OF JUDICATURE OF ONTARIO.

In the Division Court, in the County of

In the matter of the suit in the High Court of Justice for Ontario (*or* County Court of the County of).

Between A.... B...., *Plaintiff*,
and
C.... D...., *Defendant*,
and
E.... F...., *Garnishee*.

Seal.

To V.... W...., Bailiff of the said Division Court :—

You are hereby required to levy of the goods and chattels of the above-named garnishee, in the said County of (not exempt from execution), $ money, owing from him to the defendant, which has been attached towards satisfaction of the judgment of the said court in the said cause, and which, by the order of the judge of the County Court of the said County of , dated the day of , A.D. 18 , the said garnishee was ordered to pay to the plaintiff.

(*Conclude as other forms of execution.*)

---

153. EXECUTION AGAINST THE GOODS OF CLAIMANT ON INTERPLEADER.

No. , A.D. 18 .

In the Division Court, in the County of

Between A.... B...., *Plaintiff*,
and
C.... D...., *Defendant*,
and
E.... F...., *Claimant*.

Seal.

Whereas on the day of , A.D. 18 , the plaintiff duly recovered in said court, holden in and for said division, judgment against the defendant for $ debt, and $ costs of suit, which remained unsatisfied (*when the judgment has been revived, add the following words :*—" And on the day of , A.D. 18 , the said judgment was duly revived "), and the said moneys not being paid an execution issued against the goods and chattels of the defendant, under which certain goods and chattels were seized [*if the interpleader was in respect to goods attached, omit all the preceding after the word* " claimant," *and say in lieu thereof as follows :*— " Whereas a writ of attachment was sued out of this court (*or* issued by a justice of the peace), under which certain goods and chattels, etc., were seized and attached "] to which the above-named claimant made claim, and which claim came on to be heard and decided, upon interpleader summons, at a sitting of this court, held on , at , and at such last-mentioned court it was adjudged, touching the said claim, that the goods [*or* the goods, chattels, and moneys, *or* proceeds of the goods, etc. (*as the case may be*)], mentioned in the interpleader summons [*if only for a part of the goods, etc., add the words*, " hereafter mentioned, that is to say " (*here enumerate*

them)], were not the property of E.... F.... (the claimant); and it was ordered that the sum of $, the costs of that proceeding, should be paid by the said claimant to the clerk in days, for the use of the said plaintiff; and whereas the said sum of $ has not been paid, pursuant to the said order, you are hereby required to levy of the goods and chattels of the claimant, in the said County of (not exempt from execution), the said sum of $, and your lawful fees, so that you may have the same within thirty days after the date hereof, and pay the same over to the clerk of this court for the plaintiff.

(*Conclude as in other executions.*)

154. Execution for Costs.

(*Title of Court and Style of Cause.*)

{ Seal. }

You are hereby required to levy of the goods and chattels of the defendant (*or* the plaintiff) [not exempt from execution], in the said county, the sum of $ for certain costs which, by the judgment of the said court given [*or* by the order of the judge of the said court], dated the day of , 18 , were ordered to be paid by the said to the said , and which have been duly taxed and allowed at the said sum, together with your lawful fees.

(*Conclude as in other executions.*)

155. Execution for Sale of Property Seized, but Unsold for Want of Buyers.

(*Insert title of Court and Style of Cause.*)

{ Seal. }

Whereas by an execution issued out of the said court, dated the day of , 18 , you were lately required to levy of the goods and chattels of the defendant (*or* plaintiff) [not exempt from execution], in the said county, the sum of , and your lawful fees, so that you might have that money within thirty days from the said date, and pay the same over to the clerk of this court for the plaintiff (*or* the defendant), and you, at a day now past, lately returned thereon that by virtue thereof you had taken goods and chattels of the said defendant (*or* plaintiff) to the value of $, which said goods and chattels remained in your hands for want of buyers. (*Here state what the return was, if different in any respect from what is hereinbefore stated.*)

Therefore, you are required to expose for sale and sell the said goods and chattels so taken by you and every part thereof for the best price that can be gotten for the same, to satisfy the said execution.

In case the said goods and chattels do not sell for a sufficient sum to so satisfy the said execution and your lawful fees, you are required to levy of the other goods and chattels of the defendant (not exempt from execution), in the said county, the residue of the said sum and your lawful fees; so that you may have the same within thirty days, etc.

(*Conclude as in other executions.*)

156. EXECUTION IN DIVISION COURT FOR ENFORCING ORDER MADE ON APPEAL UNDER "THE ACT RESPECTING MASTER AND SERVANT," R.S.O., CAP. 139.

In the Division Court, in the County of

{Seal.}

Be A.... B...., *Appellant*,
and
C.... D...., *Respondent*.

Whereas upon the complaint under oath of the said C.... D...., the servant of the said A.... B...., the said A.... B.... was, on the day of , 18 , before E.... F...., a justice of the peace for the said County of , ordered and adjudged (*here set out the order of the justice. If for payment of wages, state amount and when payable*).

And whereas the said A.... B...., having duly appealed against the said order or conviction to the said Division Court of the said County of , and the said appeal having been heard before the judge of the said court at a sittings thereof held on the day of , 18 ;

It was thereupon ordered and adjudged by the said court that the said appeal should be dismissed, and that the said order or conviction should be affirmed (*or as the case may be*), and that the said A.... B.... should forthwith pay to the said C.... D.... the sum of $, being the amount of the said wages and costs so ordered to be paid by the said justice, together with $, being the costs of and incidental to the said appeal as allowed and taxed. And whereas the said sums so ordered to be paid remain unsatisfied,

You are therefore hereby required to levy of the goods and chattels of the said A.... B...., in the said County of (not exempt from execution), the said moneys, amounting together to the sum of $, and your lawful fees; so that you may have the same moneys thirty days after the date hereof, and to pay over the same to the clerk of this court for the said C.... D....

X.... Y...., *Clerk*.

To V.... W...., *Bailiff of the said Court*.

---

157. EXECUTION AGAINST MARRIED WOMAN.

No. , A.D. 18 .

(*Title of Court and Style of Cause.*)

{Seal.}

Whereas on the day of , A.D. 18 , the plaintiff duly recovered in the said court, holden in and for said division, judgment for $ and costs, payable out of the separate property of the defendant A.... B...., which remains unsatisfied: You are hereby required of the goods and chattels being the separate property of the defendant A.... B.... (not subject to any restriction against anticipation unless by reason of The Married Woman's Property Act the property shall be liable to execution notwithstanding such restriction), in the said county (not exempt from execution), the said moneys, amounting together to the sum of $, and your lawful fees.

(*Conclude as in other forms of execution.*)

158. WARRANT TO LEVY A FINE UPON A WITNESS IN COURT WHO REFUSES TO GIVE EVIDENCE.

Whereas H.... H...., being before this court at a sittings thereof, and called upon to give evidence in this cause, did wilfully refuse to be sworn and give evidence without alleging any just ground for such refusal (*or* after being sworn refused to give evidence (*or* to produce), *as the case may be*).

Whereupon it was adjudged and ordered by the court that the said H.... H.... should forthwith (*or* on the day of , A.D. 18 , *as the case may be*) pay to the clerk of this court a fine of $ for such neglect (*or* refusal). And whereas the said H.... H.... hath not made such payment: These are therefore (as before *or* as often before) to command you forthwith to make and levy by distress and sale of the goods and chattels of the said H.... H.... (not exempt from execution) the said fine and costs, amounting together to the sum of $, and your lawful fees; so that you may have the same within thirty days after the date hereof, and to pay the same over to the clerk of the court.

Given under the seal of the court this day of , 18 .

By order of the judge,

X.. . Y...., *Clerk.*

To V.... W...., *Bailiff of the said Court.*

Fine..... $
Costs.....
Execution..... ....

Levy the sum of..... $
And your own lawful fees ..... $

---

159. WARRANT TO LEVY FINE UPON WITNESS WHO REFUSED TO BE SWORN UPON HIS ATTENDANCE UPON SUBPŒNA.

(*Insert title of Court and Style of Cause.*)

Whereas at a sitting of this court, holden on , at , in the said county, H.... H...., of (*here describe the witness as in the subpœna*), was duly summoned to appear as a witness in this action to give his evidence on the part of the plaintiff (*or* defendant), and at the time of his being so summoned payment (*or* a tender of payment) of his necessary and reasonable expenses for such attendance was duly made to him according to law, and having appeared did then and there wilfully refuse to be sworn and give his evidence in this action (*or* to produce, *as the case may be*).

Whereupon it was adjudged, etc. (*Proceed as in the two next preceding forms, after the word* "adjudged" *to the end.*)

---

160. WARRANT TO LEVY A FINE ON A WITNESS FOR DISOBEDIENCE OF A SUBPŒNA.

(*Insert title of Court and Style of Cause.*)

Whereas by a subpœna duly issued under the seal of this court in this cause (bearing date the day of , A.D. 18) one H.... H...., of (*here name and describe the person as set forth in the subpœna*), was

duly summoned to appear as a witness to give his evidence in this action on the part of the plaintiff (*or* defendant) at a sitting of this court, held at in the said county, on the day of , A.D. 18 (and to produce then and there, *as the case may be*). And whereas it has been duly shown that payment (*or* tender of payment) of his reasonable expenses was duly made to the said H.... H.... at the time of such service. And whereas the said H.... H.... did not appear to give such evidence (*or* did not produce before the said, *as the case may be*), in obedience to the said subpœna, but wholly failed therein. And whereas the plaintiff (*or* the defendant) made application to this said court on the day of , A.D. 18 , that the said H.... H.... should be fined for such neglect and disobedience by this said court. And whereas notice of the said application was on the day of , A.D. 18 , duly served upon the said H.... H..... And afterwards on the day of , A.D. 18 (being the day named in such notice), the plaintiff (*or* defendant) and the said H.... H.... appeared in furtherance thereof, and no cause or excuse* being made to appear to the satisfaction of the court for such non-attendance (*or* for not producing the said, *as the case may be*) and neglect (*or* the said H.... H.... made default and did not appear upon the said notice to show cause to the said application or against his being fined for such neglect, and upon reading the affidavits and papers filed upon the said application showing due service of the said notice) and no cause or excuse (*proceed from the asterisk* in the next preceding paragraph to the end of it*).

Whereupon it was adjudged (*proceed as in the next preceding forms from the word* "adjudged" *to the end*).

---

161. Form of Execution in Detinue.

(*Title of Court and Style of Cause.*)

Whereas upon hearing this action of detinue at a court holden at in and for the said division on the day of , A.D. 18 , it was adjudged that the plaintiff do recover, and that the defendant do deliver to the plaintiff, the deeds (*or* the goods, *or* chattels, *as the case may be*) (*stating particulars thereof*) forthwith, and also that the defendant should pay to the plaintiff the sum of $, the value of the said goods and chattels, in case the same are not returned, upon your demanding the same, and also the sum of $ for costs of said plaintiff, and if the defendant does not return to you the said deeds (*or* the said goods and chattels) forthwith, or pay the said damages and costs upon demand, you are therefore required and ordered that, without delay, you cause the same to be returned to the plaintiff, and that if the said deeds, goods, or chattels cannot be found in the said county then that you levy of the goods and chattels of the defendant in the said county (not exempt from execution) the said moneys, amounting altogether to the sum of $, and your lawful fees, so that you may have the same within thirty days after the date thereof, and pay the same over to the clerk of this court for the plaintiff.

Given under the seal of the court this day of , A.D. 18 .

To V.... W....,
Bailiff of the said Court.

X.... Y....,
Clerk.

(*Add memo. as in form* 132.)

162. Warrant of Commitment in Default of Appearance.

No. , A.D. 18 .

In the Division Court, in the County of

Between A.... B...., *Plaintiff*,

and

C.... D...., *Defendant*.

(Seal.)

To V.... W...., Bailiff of the said court, and to all constables and peace officers of the County of , and to the gaoler of the common gaol of the said County of

Whereas at the sittings of this court (*or* of the Division Court for, etc.), holden at , on the day of , 18 , the plaintiff, by the judgment of the said court, in a certain suit wherein the court had jurisdiction, recovered against the defendant the sum of $ for his debt (*or* damages) and costs of suit, which were ordered to be paid at a day now past. And whereas the defendant, not having made such payment upon application of the plaintiff, a summons was duly issued from and out of this court against the defendant, by which summons the defendant was required to appear at the sittings of this court holden at on, etc., to answer such questions as might be put to him touching (*set out as in the summons*).* And whereas it was duly proved on oath, at the said last-mentioned sittings of this court, that the defendant was personally served with the said summons. And whereas the defendant did not attend, as required by such summons, nor allege any sufficient cause for not so attending. And whereas it appeared to the satisfaction of the judge that such non-attendance was wilful (*or*, "whereas the defendant has failed to attend after being twice so summoned").

And thereupon it was ordered by the judge of this court that the defendant should be committed for the term of days to the common gaol of the said county, according to the form of the statute in that behalf, or until he should be discharged by due course of law: These are therefore to require you, the said bailiff and others, to take the defendant, and to deliver him to the gaoler of the common gaol of the said county; and you, the said gaoler, are hereby required to receive the defendant, and him safely to keep in the said common gaol for the term of days from the arrest under this warrant, or until he shall be sooner discharged by due course of law, according to the provisions of the Act of Parliament in that behalf; for which this shall be your sufficient warrant.

Given under the seal of the court this day of , A.D. 18 .

X... Y....,
Clerk.

Debt and costs up to the time of the delivering of this warrant for execution..$

162*a*. Warrant of Commitment after Examination.

In the Division Court, in the County of

(*As in last form, down to the asterisk,* and conclude as follows:*—)

And whereas the defendant, having duly appeared at the said court pursuant to the said summons, was examined touching the said matters. And whereas it appeared on such examination that [*here insert the particular ground of commitment in the language used in the statute, e.g.*, "C.... D..., the defendant, incurred the debt (*or* liability), the subject of this action, under false pretences" (*or* by means of fraud or breach of trust)].

And thereupon it was ordered by the said judge that the defendant should be committed for the term of days to the common gaol of the said county, according to the form of the statute in that behalf, or until he should be discharged by due course of law.

These are therefore to require you, the said bailiff and others, to take the said defendant, and to deliver him to the gaoler of the common gaol of the said county; and you, the said gaoler, are hereby required to receive the defendant, and him safely keep in the said common gaol for the term of days from the arrest under this warrant, or until he shall be sooner discharged by due course of law, according to the provisions of the Act of Parliament in that behalf; for which this shall be your sufficient warrant.

Given under the seal of the court this day of , A.D. 18 .

X.... Y....,
Clerk.

Debt and costs up to the time of the delivery of warrant of execution .....$

---

163. WARRANT OF COMMITMENT FOR CONTEMPT IN OPEN COURT.

In the Division Court, in the County of

To V.... W...., Bailiff of said court, and to all constables and peace officers of the County of , and to the gaoler of the common gaol of the said County of

Whereas at the sittings of this court, holden on at , it was adjudged that E.... F.... did, then and there in open court, wilfully insult me , judge (*or* deputy *or* acting judge) of the said court [*or* did, in view of the court, wilfully insult , clerk (*or* bailiff) of the said court, during his attendance at such court (*or* did unlawfully interrupt the proceedings of the said court)]; and it was ordered that the said E.... F.... should immediately pay a fine of $ for such offence, and in default of payment be committed to the common gaol of the County of for days; and whereas the said E.... F....did not pay the said fine, in obedience to said order: These are therefore to require you, the said bailiff and others, to take the said E.... F...., if he shall be found within the said County of , and deliver him to the said gaoler of the common gaol of the said County of ; and you, the said gaoler, are hereby required to receive the said E.... F...., and him safely keep in the common gaol aforesaid for the term of days from the arrest under this warrant, unless the said fine and costs, the costs amounting to $, and also the expenses attending the commitment, amounting to the sum of $, be sooner paid.

Given under my hand and seal this day of , A.D. 18 .

[L.S.] .....,
Judge.

Sealed with the seal of the court [L.S.]

X....Y....,
Clerk.

TRANSCRIPTS.

164. Transcript to another Division Court of Judgment on Special Summons.

In the Division Court, in the County of

(Seal.)

Between A.... B...., *Plaintiff*,
and
C.... D...., *Defendant*.

On the day of , 18 , a "*Special Summons*," requiring the defendant to answer the plaintiff's claim for a debt or money demand, amounting to $, was issued out of this court in this cause, with the particulars of the plaintiff's claim thereto attached; on the day of , 18 , the defendant was duly served with a copy of the said summons and particulars of claim, and the defendant did not leave with the clerk a notice, as required by the statute in that behalf, that he disputed the plaintiff's claim, or any part thereof (*or as the case may be*), the said summons and particulars, with an affidavit of the due service of each, having been filed, final judgment was entered on the day of , A.D. 18 , by the clerk, as follows:—(*Here copy minute of judgment, and if judgment revived state the fact as in form* 164*b*). An execution issued against the goods of the defendant on the day of , 18 , and was returned on the day of , 18 , *nulla bonna* (*or as the case may be*).

Pursuant to the provisions of The Division Courts Acts, I, X.... Y...., clerk of the said court, do certify that the above transcript is correct, and duly taken from the procedure book of the said court, and that judgment in the above cause was recovered at the date above stated, viz., the day of , 18 ; and, further, that the amount unpaid on said judgment is $, as stated below.

Given under the seal of the said court the day of , A.D. 18 .

X.... Y....,
Clerk.

Amount of judgment	$
Debt	
Costs	
Total	$
Additional costs	
" interest	
Total	$
Paid	
Amount due	$

To R.... S....,
Clerk of Division Court, County of

164*a*. TRANSCRIPT TO COUNTY COURT OF JUDGMENT ON SPECIAL SUMMONS.

In the Division Court, in the County of

{Seal.} Between A.... B...., *Plaintiff.*
and
C.... D...., *Defendant.*

The following proceedings were had :—

On the day of , 18 , a special summons requiring the defendant to answer the plaintiff's claim for a debt or money demand, amounting to $, was issued out of this court in this cause, according to the statute in that behalf, with the particulars of the plaintiff's claim thereto attached ; on the day of , 18 , the defendant was personally served with a copy of the said summons and particulars of claim, and the defendant did not leave with the clerk a notice, as required by the statute in that behalf, that he disputed the plaintiff's claim, or any part thereof (*or as the case may be*), the said summons and particulars, with an affidavit of the due service of each, having been filed, final judgment was entered on the day of , 18 , by the clerk, as follows:—(*Here copy minute of judgment, and if judgment revived state the fact as in form* 164*b*), on the day of , 18 , a writ of execution on the said judgment was duly issued.

(*Conclude as in last form, omitting the address to the clerk.*)

N.B.—The above form may be adopted, with the necessary alteration, for a transcript to the County Court of a judgment upon ordinary summons.

But see 57 *Vict., c.* 23, *s.* 8.

164*b*. TRANSCRIPT OF JUDGMENT ON ORDINARY SUMMONS FROM ONE DIVISION COURT TO ANOTHER.

In the Division Court, in the County of

Transcript of the entry of a judgment recovered on the day of , A.D. 18 , in the said court, holden in and for said division, in a suit numbered , A.D.

{Seal.} Between A.... B...., *Plaintiff,*
and
C.... D...., *Defendant.*

Amount of Judgment :
Debt ....$
Costs....
$
Additional Costs....$
Total ..$
Amount paid.$
18
18
Total paid ..$
Amount due.$

Judgment for plaintiff for $ debt, and $, costs of suit ; execution issued on the day of , A.D. 18 , and returned on the day of , A.D. 18 (*here state the return*). (*If the judgment was revived, add the following words*, "and on the day of , A.D. 18 , the said judgment was duly revived.") Pursuant to the provisions of The Division Courts Acts.

I, X.... Y...., Clerk of the said Division Court, do certify that the above transcript is correct, and duly taken from the procedure book of the said court, and that judgment in the above cause was recovered at the date above stated, viz.: the day of , A.D. 18 , and, further, that the amount unpaid on said judgment is $, as stated in the margin hereof.

Given under the seal of the said court this day of , A.D. 18 .

X.... Y...., *Clerk.*

To Clerk of the Division Court in the County of

INTERPLEADER.

165. Application of Bailiff for Interpleader.

(*Insert title of Court and Style of Cause.*)

By virtue of a writ of execution (*or* "attachment") in this cause, dated the day of , 18 , from this court, I did, on the day of , 18 , seize and take in execution (*specify goods, chattels, etc., seized*), as the property of the defendant. E....F...., of the Township of , etc., now claims the same as his property (*or* now claims the said and as his property) and that the value thereof is $, you will therefore be pleased to issue an interpleader summons to the plaintiff and to the said E.... F...., according to the statute in that behalf.

Dated , 18

V.... W.. .,
Bailiff.

To the Clerk of the said Court.

---

166. Landlord's Claim for Rent under Section 269.

Whereas I have been informed that you have seized the goods of C.... D...., of , on the premises at , to satisfy a certain judgment of the Division Court in against the said C ... D...., at the suit of A.... B...., I hereby give you notice that I am the landlord of the said premises, and that I claim $ for rent now in arrear, being for one (*or as the case may be*), and I require you to pay the same to me before you apply the proceeds of the sale of said goods or any part thereof to satisfy the said judgment.

Dated, etc.

E.... F....,
Landlord of said Tenement.

To V.... W....,
Bailiff of, etc.

---

167. Summons in Interpleader.

No. , A.D. 18 .

In the Division Court, in the County of

Between Henry Bray, *Plaintiff*,
and
John Nokes, *Defendant*,
and
Robert Roy, *Claimant*.

{ Seal. }

You, the said Robert Roy, are hereby summoned to appear at the sitting of this court, to be holden on Friday, the first day of November, A.D. 18 , at the hour of ten o'clock in the forenoon, at the township hall, in the Village of Markham, in the said county, touching a claim made by you to certain goods and chattels and cattle (*or* moneys, *or* securities, *as the case may be*), viz.:—(*here specify the goods, etc., claimed*), seized and taken in execution (*or*

attached), under process issued out of this court in this action (*or* by attachment issued by G.... R...., a justice of the peace), at which time and place you will be required to maintain your claim to the said goods and chattels, and in default of your then establishing such claim the said goods and chattels will be sold (*or* the said moneys be paid and delivered over), according to the urgency of the said process.

And take notice that you are required, within five days after the day of service hereof upon you, to deliver or leave at the clerk's office particulars of the goods and chattels (*as the case may be*) so claimed by you, and the grounds of your claim.

And you, the said Henry Bray, are also hereby summoned to appear at the said sitting of the said court, and maintain your right to have the said goods, etc., (*or as the case may be*) sold to satisfy your claim.

And all the said parties are required to take notice that every claim will, at the said sitting of the said court, be adjudicated upon.

Given under the seal of the court this day of January, A.D. 18 .

R. ROE,
Clerk.

NOTICE TO THE PARTIES.

Where, under sub-section 3 of section 269 of the Act, the claimant to goods taken under process claims damages from the creditor, or from the bailiff, or in respect of the seizure of the property, he shall in the particulars of his claim to the goods state the amount he claims for damages, and the grounds upon which he claims such damages.

Where a creditor claims damages against a bailiff arising out of the execution of any process, he shall, five clear days before the day upon which the interpleader is to be tried, deliver to the bailiff a notice of such claim, stating the grounds and amount of such claim.

(*Add also memorandum, form* 51.)

---

168. PARTICULARS OF CLAIM IN INTERPLEADER.

In the First Division Court, in the County of Brant.

Between AARON BURR, *Plaintiff*,
and
COLIN DUFFY, *Defendant*,
and
EDGAR FRENCH, *Claimant.*

To whom it may concern :—

Edgar French, of , claims as his property the following goods and chattels (*or* moneys, etc.), seized and taken in execution (*or* attached), as it is alleged, namely : (*specify the goods and chattels, or chatte's or moneys, etc., claimed*), and the grounds of claim are (*set forth in ordinary language the particulars on which the claim is grounded, as how acquired, from whom, when, and the consideration paid or to be paid, and when*), and this the said Edgar French will maintain and prove.

E. FRENCH.

Dated this day of , 18 .

N.B.—If any action for the seizure has been commenced, state in what court and how the action stands.

Where damages claimed, add claim therefor : see rule 35a ; *for form, see additional forms.*

169. Adjudication on Interpleader.

Adjudged, that the goods [*or* the goods, chattels, and moneys, *or* proceeds of the goods, etc. (*as the case may be*)] mentioned in the interpleader summons [*if only for a part of the goods, etc., add the words,* "hereafter mentioned, that is to say (*here enumerate them*)] are (*or* are not) the property of E.... F.... (the claimant), or that rent to the amount of $ is due to E.... F.... (the claimant): Ordered that $, the costs of this proceeding, be paid by (*here insert such order as the costs or the subject in dispute, if any, as the judge shall have made*) in days.

Where damages claimed or adjudged.

It is also adjudged that the said E.... F.... (the claimant) has sustained damages arising or capable of arising out of the execution of the process by which said (*or as the case may be*) were taken in execution (*or* attached) to the amount of $, and that the same is recoverable from and payable by A.... B.... (the execution creditor, *or* L.... M...., the bailiff) to the said E.... F.... (the claimant), and which said sum is hereby ordered to be paid forthwith (*or as the case may be*).

---

170. Where both Goods and Damages are Claimed, and the Claim to Neither is Established.

Adjudged, touching the claim of E.... F.... to certain goods, etc. (*as in the preceding form*), and for damages arising out of the said execution, referred to in the interpleader summons, and which E.... F.... claims against (the execution creditor) and the bailiff of the court that the said goods, etc. (*or moneys*), or part thereof (*describe the part*), are the property of (execution debtor), and that the said E.... F.... is not entitled to receive any damages from either (the execution creditor), *or* the said bailiff: Ordered that the costs, etc. (*as in the preceding form*).

---

171. Where Both Goods and Damages are Claimed, and the Claim to Both is Established.

Adjudged, touching the claim of E.... F.... to certain goods, etc. (*as in form* 169), and for damages arising (*same as in form* 170), that the said goods and chattels (*or* moneys), or part thereof (*specifying them*), are the property of E.... F...., and that E...., F.... is entitled to recover the sum of $ for damages arising out of the said execution against the bailiff of this court: Ordered that the bailiff of this court do pay the said E.... F.... the sum of $ for damages, and the sum of $ for costs, and the said A.... B.... (the execution creditor) do pay the said E.... F.... the sum of $ for costs.

172. Where Both Goods and Damages are Claimed, and Money is Paid into Court, in Respect of the Latter, and the Claim to the Goods is Established, and the Money Paid into Court is Found to be Sufficient to Satisfy the Damages.

It is adjudged (*proceed here as in form* 169), and for damages arising out of the said execution, and which E.... F.... claimed against E.... G...., the bailiff of this court, and in respect of which he hath paid into court the sum of $ that the said goods and chattels, etc. (*or* moneys, etc.), *or* part thereof (*specifying them or it*), are the property of E.... F...., but that the said sum paid into court is sufficient to satisfy all damages arising out of the said execution: Ordered that A.... B.. (the execution creditor) do pay to the said E.... F.... for her costs, and that E.... F.... do pay to the said E.... G...., the said bailiff, the sum of $ for her costs.

(*Conclude as in form* 169.)

(*The foregoing form* 172 *may be adapted to the case where money is paid into court in respect of damages or the claim to the goods is established and the money paid into court is adjudged insufficient*): Ordered that A.... B.... (the execution creditor) do pay the sum of $ for costs, and that E.... G...., the said bailiff, do pay the said E.... F.... the further sum of $ for damages, and also the sum of $ for costs.

(*Conclude as in form* 169 *ante.*)

---

173. Adjudication for Damages, in a case Where the Execution Creditor Recovers against the Bailiff, who pays Money into Court.

Adjudged, touching the claim, etc. (*as in preceding forms*), and in respect of damages arising out of an execution in this action, in which process given from the court at the instance of the said A.... B.... (the execution creditor), directing the said bailiff to this court to levy the sum of $ of and from the goods and chattels of C.... D.... (the execution debtor), and in respect of which damages E... G..., the bailiff of this court hath paid into court the sum of $, that the sum paid into court is not sufficient to satisfy all damages arising out of the said execution (*or* that the sum paid into court is not sufficient to satisfy the damages arising out of the said execution), and that the said A... B.. (the execution creditor) is entitled to recover the further sum of $ for damages from the said E.... G...., the said bailiff: Ordered that the said A.... B.... do pay the said E.... G.... the sum of $ for costs (*or* that the said E.... G.... do pay to the said A.... B.... the further sum of $ for damages, and also $ for costs).

(*Conclude as in form* 169.)

---

174. Where both Goods and Damages are Claimed, and the Claim to the Goods is, but that to Damage is not, Established.

Adjudged, touching the claim of E.... F.... to certain goods, etc. (*as in form* 169), and for damages, etc. (*as is form* 170), but that the said E... F... is not entitled to recover any damages from either the said A.... B.... (the execution creditor) or the said bailiff: Ordered that A.... B.... (the execution creditor) do pay to the said E.... F.... the sum of $ for the costs, and that the said E.... F.... do pay to the said bailiff the sum of $ for his costs of defending the said claim for damages.

(*Conclude as in form* 169.)

175. WHERE BOTH GOODS AND DAMAGES ARE CLAIMED, AND THE CLAIM TO THE GOODS IS NOT, BUT THE CLAIM TO DAMAGES IS, ESTABLISHED.

Adjudged, touching the claim of E.... F...., etc. (*as in preceding form* 169), that the said goods and chattels, etc. (*as in preceding form* 169), are the property of the said C.... D.... (the execution debtor), and that the said E.... F.... (the claimant) is entitled to recover $ for damages from the said bailiff of this court, but not any damages from A.... B.... (the execution creditor): Ordered that the said E.... F.... do pay to the said A.... B.... the sum of $ for his costs, and that the said bailiff of this court do pay to the said E.... F.... the sum of $ for damages, and $ for costs.

(*Conclude as in form* 169.)

(*From the foregoing, forms may easily be framed to suit other circumstances, as where the execution creditor makes claim for damages from the bailiff; and the claim to damages is established, or where it is not established.*)

EXAMINATIONS, NEW TRIALS, AND REFERENCES.

176. NOTICE OF APPLICATION FOR ORDER TO EXAMINE SICK, AGED, OR INFIRM WITNESS.

(*Insert title of Court and Style of Cause.*)

Take notice, that a motion will be made on behalf of the above-named plaintiff (*or* defendant) to the judge of the court, at his chambers in the Court House, in the City of Hamilton (*or as the case may be*), on , the day of , 18 , at o'clock in the forenoon, or so soon thereafter as the motion can be heard, for an order under the 137th section of The Division Courts Act to examine E .... F...., etc., a material and necessary witness in this cause for the plaintiff (*or* defendant), under the provisions of said section, and that on such motion will be read the affidavits of , true copies of which are hereto annexed.

Dated the day of , 18 .

(*Signature of the party, his solicitor, or agent.*)

To

(*Name of party to whom notice given.*)

177. Order for Examination of Sick, Aged, or Infirm Witness, Where Both Parties Appear.

(*Insert title of Court and Style of Cause.*)

Upon application of the above-named plaintiff (*or* defendant) in this cause, and upon reading the affidavit of , filed herein, notice of application and affidavit of service thereof, and a copy of said affidavit of the said , on the defendant (*or* plaintiff) in this cause, and upon hearing the parties by their solicitors (*or* agents);

It is ordered that G.... H...., of, etc., do take evidence on oath of E. .. F...., of, etc., a witness on behalf of the plaintiff (*or* defendant), pursuant to the 137th section of The Division Courts Act, at such time and place as the said G.... H.... may by writing appoint, and shall reduce such evidence to writing, and cause the same to be signed by the said E.... F...., and when so signed shall duly transmit the same to the clerk of this court.

It is further ordered that the defendant (*or* plaintiff), his solicitor or agent, shall have two days' notice of the time and place of such examination; that the costs of this order and the costs of the examiner be reserved until the trial of this cause. (*Any other terms may be here inserted.*)

Date ....., *Judge.*

---

178. Order for New Trial.

In the Division Court, in the County of

Between A.... B...., *Plaintiff*,
and
C.... D...., *Defendant.*

It is ordered that the judgment rendered in this cause, and all subsequent proceedings, be set aside, and a new trial be had between the parties on (*set out the terms and conditions, if any, on which the order is made.*)

....., *Judge.*

Dated , 18 .

---

179. Form of Order for Judgment under Section 146.

(*Title of Court and Style of Cause.*)

At the sittings of this court, held on the day of , 18 , at , in the said division, this case came on to be heard, and judgment was rendered for the for $.

And afterwards application having been made by for a new trial therein, and I, having since considered the facts of the case and the merits of the said application, do hereby, instead of granting a new trial, herein pronounce as my judgment that which, in my opinion, ought to have been pronounced at the trial, and I do now order judgment to be entered as follows:—

(*Here set forth the nature of the order as in form* 91.)

180. FORM OF ENTRY IN PROCEDURE BOOK UPON JUDGE'S ORDER UNDER SECTION 146.

(*After entering the judgment first rendered, proceed as follows:*—)

The defendant (*or* plaintiff, *as the case may be*) made application for a new trial, and the judge, instead of granting the same, ordered that judgment be entered as follows:—

It is adjudged, etc. (*here set forth that part of the judge's order which directs how judgment is to be entered*).

---

181. ORDER OF REFERENCE.

In the Division Court, in the County of

{Seal.}

Between A.... B...., *Plaintiff*,
and
C.... D...., *Defendant*.

By consent of the plaintiff and defendant (*or* their solicitors, *or as the case may be*), given in open court (*or* produced in writing to the court), it is ordered that all matters in difference in this cause (*and if consented to add*, "and all other matters within the jurisdiction of this court in difference between the said parties") be referred to the award of (*if there be three arbitrators, here insert*, or of any two of them) , so as said award be made in writing, ready to be delivered to the parties entitled to the same on or before the day of , or such further day as the said arbitrator may, by writing under his hand, endorsed hereon, enlarge the time for making his said award, and that the said award may be entered as the judgment in this cause (*add any terms that the judge may prescribe, or the parties may agree upon, such as in form* 185).

Dated this day of , 18 .

X.... Y....,
Clerk.

---

182. APPOINTMENT OF THIRD ARBITRATOR OR UMPIRE TO BE ENDORSED.

We hereby appoint , of, etc., as a third arbitrator with us for determining the matters in dispute within referred to us.

Or, We hereby appoint , of, etc., as an umpire as to certain differences of opinion which have arisen between us as arbitrators of the matters within referred.

---

183. APPOINTMENT FOR MEETING ON REFERENCE.

In the, etc. (*state title of court and style of cause*).

B.... v. D.... } I appoint the day of next, at the hour of , at , for proceeding on this reference.

.....
Arbitrator.

To (*both parties*).

184. Enlargement to be Endorsed.

I enlarge the time for making my award respecting the matters referred to me by the within order of reference until the day of , 18 .

Dated, etc.

.....
Arbitrator.

---

185. Order of Reference Containing Special Clauses.

(*Commence as in form* 181.)

{ Seal. }

1. The said arbitrator to have power, by writing, signed by him, from time to time, to enlarge the time for making his award.
2. That if either of the parties be dead before the making of the award that the same may be afterwards delivered to their respective personal representatives who shall require the same.
3. That the cost of the reference and award shall be at the discretion of the said arbitrator (*or as the case may be*).
4. That the arbitrator shall be at liberty to order and determine what he shall think fit to be done by either of the parties respecting the matters referred.
5. That the witnesses and parties shall be examined by the arbitrator on oath.
6. That the arbitrator shall be at liberty to proceed *ex parte* in case either party, after reasonable notice, shall, at any time, neglect or refuse to attend on the reference.
7. That the parties respectively shall produce before the arbitrator all books, deeds, papers, accounts, vouchers, writings, and documents within their possession or control, which the arbitrator may require and call for as in his judgment relating to the matter referred.
8. That neither party shall wilfully or wrongfully do, or cause to be done, any act to delay or prevent the arbitrator from making his award.
9. That neither of said parties shall bring or prosecute any action against the arbitrator concerning the matters referred.
10. That if either party shall, by affected delay or otherwise, wilfully prevent the arbitrator from proceeding in the reference, or from making his award, he shall pay such costs to the other as the arbitrator shall think reasonable.
11. The said parties jointly and severally agree with the said arbitrator, in consideration of his taking upon himself the burthen of the reference, to pay him his reasonable charges for the abitration and award.

(*Here add any other terms that the judge may prescribe or the parties may agree upon.*)

Given under the seal of the court this day of , 18 .

R. ROE,
Clerk.

186. Award.

After hearing and considering the proofs laid before me (*or* us) in the matter of the within reference, and in full determination of the matters to me (*or* us) referred, I (*or* we) do award that the within-named A.... B.... is entitled to recover from the within-named C.... D.... the sum of , together with the costs of this suit, and also , the costs of this reference (*or as the case may be*), and that the same shall be paid by the said C.... D.... within days, and that judgment be entered in the within-mentioned case accordingly.

Dated this day of , 18 .

Witness : } ....., *Arbitrator.*

(*Add affidavit of execution, form* 35.)

---

187. Bond on Supersedeas to Warrant of Attachment.

(*Insert title of Court and Style of Cause.*)

Know all men by these presents, that we C.... D...., of (*insert place of residence and addition*), the above defendant E.... F...., of, etc., and G.... H...., of, etc., are, and each of us is, jointly and severally held and firmly bound to A.... B...., of, etc., the above plaintiff, in the sum of , to be paid to the said plaintiff, his certain attorney, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and each and every of us binds himself, his heirs, executors, and administrators firmly by these presents.

Sealed with our respective seals, and dated the day of , 18 .

Whereas the above-named plaintiff hath sued out a warrant of attachment against the goods and chattels of the defendant for the sum of , and under and by virtue of the said attachment certain goods and chattels of the defendant, to wit : (*specify property seized*), have been seized and attached ; and the defendant desires that the said warrant be superseded, and the property, so attached, restored to him under the provisions of the 259th section of The Division Courts Act ;

Now the conditions of this obligation is such that if the said defendant, his heirs, executors, or administrators, do and shall, in the event of the claim in the said cause being proved, and judgment being recovered thereon, as in other cases, where proceedings have been commenced against the person, pay the same, or pay the value of the said property, so taken and seized as aforesaid, to the plaintiff, his executors or administrators, or produce such authority whenever thereto required to satisfy such judgment, then this obligation to be void ; else to remain in full force and virtue.

Sealed and delivered in presence of } C.... D.... [L.S.]
G.... H.... [L.S.]
E.... F.... [L.S.]

(*Add affidavit of execution, form* 35.)

188. Bond on Seizure or Sale of Perishable Property.

In the Division Court, in the County of

Between A.... B...., *Plaintiff*,
and
C.... D...., *Defendant*.

Know all men by these presents, that we A.... B...., of (*insert place of residence and addition*), the above-named plaintiff, E....F...., of, etc., and G.... H...., of, etc., are, and each of us is, jointly and severally held and firmly bound to C.... D...., the above-named defendant, in the sum of $ (double value of the appraised property), to be paid to the defendant, his certain attorney, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and each and every of us binds himself, his heirs, executors, and administrators, firmly by these presents.

Sealed with our respective seals, and dated this day of A.D. 18 .

Whereas the above-named plaintiff hath sued out of the said court (*or* from a justice of the peace) a warrant of attachment against the goods and chattels of the defendant, and hath requested that certain perishable property, to wit: (*specify property*), belonging to the defendant, may be seized, and forthwith exposed and sold, under and by virtue of the said warrant of attachment [*or* whereas certain perishable property, to wit: , belonging to the defendant, hath been seized under and by virtue of a warrant of attachment, issued out of the said court (*or* by a justice of the peace) in the above-named cause, and hath been duly appraised and valued at the sum of $ and is now in the hands of the clerk of the said court; and whereas the plaintiff hath requested the said clerk to expose and sell the said goods and chattels as perishable property], according to the form of the statute in that behalf;

Now the condition of this obligation is such, that if the said plaintiff, his heirs, executors, or administrators, do repay to the said defendant, his executors or administrators, the value of the said goods and chattels, together with all costs and damages that may be incurred in consequence of the seizure and sale thereof, in case judgment be not obtained by the plaintiff, according to The Division Courts Act, then this obligation to void; else to remain in full force and virtue.

Sealed and delivered in presence of

G.... B.... [L.S.]

E.... F.... [L.S.]

G.... H.... [L.S.]

---

189. Bond for Security for Costs, where Plaintiff out of Ontario.

(*Insert title of Court and Style of Cause.*)

Know all men by these presents (*proceed with penal part of bond as in ordinary cases*).

Whereas an action (*or* plaint) was upon the day of , A.D. 18 , entered by the above-named plaintiff against the above-named G.... H.... in the First Division Court of the County of Brant.

And whereas it has been made to appear that the said plaintiff does not reside in the province, and it has been ordered that proceedings herein shall be stayed until security for costs of the defendant shall have been given to the satisfaction of the clerk of the said court, or until deposit of a sufficient sum to meet and pay the said costs shall have been made with the clerk of the said court; and no such deposit having been made.

And whereas the said plaintiff and the above-bounden C.... D.... and E.... F. . , as sureties for the said plaintiff, have agreed to give such security pursuant to the said order by entering into this obligation with the condition hereunder written; and this security has been approved by the clerk of the said court.

Now the condition of this obligation is such that if the said plaintiff, or any plaintiff substituted in his stead, discontinues, become non-suit in the said action, or in case the said action is referred to arbitration, and an award is made against the said plaintiff, or any substituted plaintiff therein, showing that he is not entitled to recover therein, or if the said defendant, or any substituted defendant, obtain adjudgment, or verdict, or award therein, then or in either of the said cases of the above-bounden A.... B...., C.... D...., and E.. F...., or either of them, their or either of their heirs, executors, or administrators do pay or cause to be paid to the said defendant, his executors, administrators, or assigns, his or their costs to be taxed in the said action, then this obligation to be void and of no effect, or otherwise to remain in full force and virtue.

Sealed with our seals and dated this day of , A.D. 18 .

Signed, sealed, and delivered in presence of

A.... B.... { Seal. }

C.... D.... { Seal. }

E.... F. .. { Seal. }

CONSENTS AND AGREEMENTS.

190. Consent to an Appeal under Section 148 of the Act, Sub-Section 2.

(*Insert title of Court and Style of Cause.*)

We hereby consent that this cause may be entered, heard and disposed of in the Court of Appeal for Ontario, pursuant to the provisions of section 148 of The Division Courts Act.

Dated, etc.

(*Signed by the parties, their counsel or solicitors.*)

191. CONSENT TO TRY CASE IN DIVISION COURT.

(*Insert title of Court and Style of Cause.*)

We hereby consent to this cause being entered, tried and finally disposed of under the 91st section of The Division Courts Act, in the Division Court of the County of

Dated, etc.

A.... B.....
C.... D.....
(*Or by their counsel, solicitor, or agents.*)

---

192. AGREEMENT NOT TO APPEAL.

(*Insert title of Court and Style of Cause.*)

We hereby agree not to appeal, in this cause, to the Court of Appeal against the decision of the judge to be made herein.

Dated this day of , A.D. 18 .

A.... B....
C.... D.....

JURISDICTION.

193. CONSENT TO GIVE JURISDICTION TO THE DIVISION COURT, UNDER CLAUSE (*a*) OF SUB-SECTION 1 OF SECTION 70, AS AMENDED BY 56 VICT., CAP. 15.

(*Title of Court and Style of Cause.*)

We (*or* the respective solicitors of), A.... B.... and C.... D...., do hereby agree that the First Division Court of the County of Brant, holden at the City of Brantford, in the said county, shall have power to try an action (*or* this action) to be brought by the said A.... B.... against the said C.... D...., for (*here state the cause of action*), under the provision of clause (*a*) of sub-section 1 of section 70 of The Division Courts Act; the amount claimed not exceeding $100.

Witness our hands this day of , A.D. 18 .

A.... B.... (*or* E ... F...., Solicitor for A.... B....).
C.... D.... (*or* G.... H...., Solicitor for C.... D....).

---

194. UNDERTAKING BY NEXT FRIEND OF INFANT TO BE RESPONSIBLE FOR DEFENDANT'S COSTS.

In the Division Court, in the County of

I, the undersigned E.... F...., being the next friend of A.... B...., who is an infant, and who is desirous of entering a suit in this court against C.... D...., of, etc., hereby undertake to be responsible for the costs of the said C.... D.... in such cause, and that if the said A.... B.... fail to pay the C.... D.... all such costs of such cause as the judge shall direct him to pay to the said C.... D.... I will forthwith pay the same to the clerk of the court.

Dated this day of , 18 .

Witness:

(Signed) E.... F....

NOTICES BY CLERK.

195. For Clerk's Notices to the Plaintiff.

No. , A.D. 18 .

In the Division Court, in the County of

Between ...., *Plaintiff*,

and

....., *Defendant*.

Take notice that the defendant* has given a confession for the full amount of your claim.

Or, *Disputes your claim (*or* does not dispute your claim).

Or, *Disputes the following items of your claim, viz.: (*here specify the items set forth in the defendant's notice to the clerk*), and admits the residue, and you are required forthwith to say in writing if you are willing to take judgment for the part admitted.

Or, *Will on the trial claim a set-off against your demand, and the particulars thereof are hereunto annexed.

Or, *Will at the trial insist that your claim is barred by the Statute of Limitations (*or other statutory defence not herein specified*).

Or, *Will on the trial insist that he is discharged from payment of your claim by the provisions of the Insolvent Act.

Or, *Will admit on the trial the 1st, 9th, 11th (*or* other) items of your particulars of account to be correct.

Or, *Will admit on the trial the signing (*or* endorsement) of the promissory note (*or* bill of exchange) sued upon (*or as the case may be*), and denies the residue of your claim.

Or, *Has paid into court the sum of $, together with $, for costs of suit incurred up to the day of such payment in full satisfaction of your claim, which will be paid to you upon demand at my office; and all proceedings in the action will be stayed, unless within three days after you receive this notice you signify to me your intentions to proceed for the remainder of your demand; and in case you either accept or refuse the same in full, you must give a written notice to that effect to me within the said three days, otherwise you will be liable to pay to the defendant such subsequent costs as he may incur in this action.

Or, *Has pleaded that he duly tendered to and offered to pay you before this action was brought the sum of $, in full satisfaction of your claim, and has filed a plea of such tender in my office, and paid that sum into court, pursuant to the 122nd section of The Division Courts Act, and that sum will be paid to you, less one dollar, in case you do not wish to further prosecute your suit, and all proceedings in the action will be stayed, unless you signify to me within three days from the time you receive this notice your intention to proceed for your demand, notwithstanding such plea.

Or, *Will on the trial insist that you are not a duly certified solicitor (*or* not a licensed veterinary, *or* auctioneer, etc. (*as the case may be*).

Or, *Will insist as a defence upon the trial that you have not given the proper notice of action before suit to which the defendant is entitled as a justice of the peace (*or* peace officer, *or* as a bailiff of the Division Court under the 290th section of The Division Courts Act.)

Or, *Defends this action under the protecting clauses of The Division Courts Act, viz.: sections 285, 286, 287, 288, 289, 290, 291, 292, etc.

Or, *Has paid into court the full amount of your demand, together with your costs herein (*or* has paid into court $, part of your claim).

Or, *Has filed a statement confessing and admitting $, part of the amount claimed by you (and proposing to pay the same by instalments of $). If you consent to accept the amount so admitted (and to the mode of payment by instalment as proposed), it will not be necessary for you to attend on the day of hearing. If, however, you do not consent to accept the sum so admitted in satisfaction of your claim, you must be prepared to prove the same at the sittings of the court to be holden on the day of , A.D. 18 .

Or, *Disputes your claim in part only, viz.: (*here specify the parts disputed as set forth in defendant's notice*), and he admits the residue to be correct, you are therefore required to notify me to say in writing if you are willing to take judgment for the part undisputed; and if you fail to do so it will be assumed that you seek to recover your whole claim, in which case you must proceed to the trial of this cause at the next sittings of this court, to be held on the day of , 18 .

Or, *Q.... R.... and O.... K...., two of the defendants, have been served with the summonses in this cause, but have not given any notice disputing your claim that H.... J.... and L.... T...., two other of the defendants, have not been served with the summons, but have given a confession of the debt.

Or, *Has withdrawn his defence and consents that judgment be entered against him for the sum of $ and costs.

Or, *Take notice that the defendant intends at the hearing of this action to give in evidence and rely upon the following grounds of defence* (*here state grounds of defence; see forms following which are suggested and may be varied to suit circumstances*).

Or, *That the defendant was an infant, within the age of twenty-one years, when the supposed claim arose (*or* the supposed contract or agreement was made), and that he was born, as he believes, at , in the County of , on the day of , 18 .

Or, *That the defendant was discharged by composition, or scheme of arrangement with his creditors, on the day of , 18 .

Or, *That no notice of action was given to the defendant pursuant to the statute , Vict., chap.

Or, *That the defendant intends to set up a counterclaim against the plaintiff's demand, the particulars of which are annexed hereto (*the clerk is to annex to this notice the particulars of set-off or counterclaim as furnished by defendant, and is to seal with the seal of the court the notice and particulars filed in the court*).

Or, *That the defendant intends to rely as a matter of equitable defence on the facts set forth in the statement hereunder written:

The facts constituting the equitable defence to this action are as follows:—(*Here set out the facts as concisely as possible, and number the paragraphs as in an affidavit*).

Or, *That the defendant has paid into court the full amount of your demands, together with your costs herein.

---

195. Acceptance of Money Paid into Court.

(*Insert title of Court and Style of Cause.*)

Take notice that the plaintiff accepts the sum of $ paid by you into court in satisfaction of the claim in respect of which it is paid in.

Dated the day of , 18 .

N.... G...., *Clerk.*

To the said defendant.

197. CLERK'S NOTICE OF TRIAL BY JURY AND NEW TRIAL.

(*Insert title of Court and Style of Cause.*)

Take notice that this cause will be tried by a jury, the plaintiff (*or* defendant) having demanded a jury therein; *or* take notice that the judge has ordered a new trial upon payment of costs (*or* with costs to abide the event, *or as the case may be*), and has ordered the next trial to be had before a jury (*or as the case may be*), and that such trial will be held at the town hall in Paris on , the day of , A.D. 189 , at the hour of o'clock a.m.

Yours, etc.,

R. ROE,
Clerk.

To the above-named plaintiff, defendant, primary debtor, garnishee, *or* other party, as the case may be.

---

198. NOTICE UNDER SECTION 112.

(*Title of Court and Style of Cause.*)

Take notice that the judge has made an order granting leave to the defendant to dispute your claim under section 112, and the defendant has given the requisite notice for that purpose. The trial of the cause will take place at the of , in the County of , on , the day of , 189 , at the hour of o'clock in the noon.

Yours, etc.,

R.... G....,
Clerk.

To the plaintiff.

---

199. CLERK'S NOTICE OF RETURN OF EXECUTION UNDER SECTION 218.

(*Title of Court and Style of Cause.*)

Take notice that the execution issued on the transcript of judgment in this cause received from the Division Court of the County of , on the day of , A.D. 189 , was returned *nulla bona* on the day of , A.D. 189 .

Dated this day of , A.D. 189 .

Yours, etc.,

R. ROE,
Clerk.

To the above-named plaintiff, *or* defendant, *or* as the case may be.

---

200. CLERK'S NOTICE UNDER AMENDED SECTION 87 (52 VICT., C. 12, SEC. 5).

(*Insert title of Court and Style of Cause.*)

Take notice that the proceedings in this action having been duly transferred to this court, the same will be placed on the list for trial at the sittings thereof, to be held in the town hall at Castleford, in the County of , on , the day of , A.D. 189 , at the hour of o'clock a.m.

Dated this day of , A.D. 189 .

Yours, etc.,

R. ROE,
Clerk.

To the above-named parties and their agents.

201. Clerk's Notices to Either Party.

(*Insert title of Court and Style of Cause.*)

(*Append the following to every notice where the defendant, primary debtor, or garnishee has given notice that he disputes the plaintiff's claim, or has given any other notice of which the plaintiff should be informed, before the trial; or in any case in which it has become the duty of the clerk to give notice to any part of any defence, admission, judge's order, or other matter of which he should be notified before the trial.*)

And also take notice that this action will be tried at the sittings of this court, to be held in the town hall in Paris on Tuesday, the day of , A.D. 189 , at the hour of o'clock a.m.

Dated this day of , A.D. 189 .

Yours, etc.,

R. ROE,
Clerk.

To the above-named plaintiff, defendant, primary debtor, garnishee, *or* other party, as the case may be.

---

202. Clerk's Notice to Parties of Time Fixed by Judge for Delivery of Judgment, under Rule 161.

(*Insert title of Court and Style of Cause.*)

Take notice that the judge will give his decision in this cause at the sittings of this court to be holden at in the County of upon the day of , A.D. 18 , at the hour of (*or* take notice that the decision of the judge in this cause will be delivered in writing at the office of the clerk of this court at , in the County of , upon , the day of , A.D. 18 , at the hour of), in the noon, and will be then and there read by the clerk to the parties, *or* their agents, if present.

Dated the day of , A.D. 18 .

Yours, etc.,

R. ROE,
Clerk.

To the above-named parties and their agents.

NOTICES BY PARTIES.

203. Notice of Withdrawal of Defence.

(*Title of Court and Style of Cause.*)

Take notice that I withdraw my defence, of which I gave you notice, and consent that judgment be entered against me for the sum of $.

Yours, etc.,

C.... D....,
Defendant.

To the clerk.

204. NOTICE OF OBJECTION TO JURISDICTION TO TRY COUNTERCLAIM.

(*Insert title of Court and Style of Cause.*)

Take notice that the plaintiff objects to the court giving any relief upon the counterclaim raised in this action, upon the ground that it involves matter beyond the jurisdiction of this court.

And, further, take notice that the plaintiff will, on the day appointed for the trial of this action, apply to the judge to adjudicate upon the original claim herein.

Dated day of , 189 .

A.... B....,
Plaintiff.

To the clerk and to the defendant.

---

205. DISCONTINUANCE.

(*Title of Court and Style of Cause.*)

I withdraw this action, as I do not intend to proceed with the same, and I am prepared to pay the defendant's taxable costs (if any) on your notifying the defendant and taking such costs.

Dated this day of , A.D. 18 .

X.... Y....,
The Plaintiff.

To the clerk of the court and to the defendant.

---

206. NOTICE TO CLERK OF CHANGE IN PLAINTIFF'S TITLE BEFORE JUDGMENT.

(*Title of Court and Style of Cause.*)

I hereby give you notice that A.... B...., the plaintiff (*or* one of the plaintiffs) in the above action, died upon the day of , A.D. 18 , and that his last will and testament were duly proved by me in the Surrogate Court of the County of (*or* that letters of administration of his property were duly granted to me) upon the day of , A.D. 18 , and that I am the executor of the said will (*or* that I am the administrator of the property of the said deceased).

(*Or*, the above-named A.... B...., by an assignment dated the day of , 18 , duly assigned all his interest in the subject-matter of the above action to me, the undersigned.)

And, further, take notice that I am desirous of being substituted as plaintiff in the above action against the above-named defendant in place of the said A.... B.... (*or* in addition to the said plaintiff).

Dated this day of , 18 .

[Signature.]

To Mr.....,
The Clerk of the said Court.

207. GENERAL HEADING AND CONCLUSION OF ALL NOTICES, ADMISSIONS, ORDERS, ETC.

No. , A.D. 18 .

In the Division Court, in the County of

Between A.... B...., *Plaintiff*,

and

C.... D...., *Defendant*,

Dated this day of , 18 .

[*Clerk, or* person sending notice *or* making admission, *or* signing order.]

To (the person to whom notice is sent).

---

208. DEMAND FOR STATEMENT OF NAMES AND PLACES OF RESIDENCE OF PERSONS CONSTITUTING PLAINTIFFS' FIRM.

(*Title of Court and Style of Cause.*)

SIR,—On behalf of the above-named defendant E.... F...., I require of you, forthwith, to declare to me, in writing, the names of all persons who are partners in the firm of A.... B.... & Co., the above-named plaintiffs, pursuant to the 108th section of The Division Courts Act.

Dated, etc.

Yours, etc.,

M.... N....,

Solicitor (or agent) for the defendant E.... F....

To Mr. X.... Y....,

The plaintiff's solicitor (or agent, or as the case may be).

---

209. DECLARATION IN ANSWER THERETO.

(*Title of Court and Style of Cause.*)

SIR,—The names and places of residence of all the persons constituting the firm of A.... B.... & Co., the above-named plaintiffs, are as follows:—

A.... B...., who resides at, etc.
G.... H...., who resides at, etc.
L.... M...., who resides at, etc.

Yours, etc.,

X....Y....,

Plaintiff's solicitor (or agent).

To Mr. M.... N....,

Solicitor (or agent) for the defendant E.... F....

---

210. NOTICE OF APPLICATION FOR ORDER FOR NAMES OF MEMBERS OF FIRM.

(*Title of Court and Style of Cause.*)

SIR,—Take notice that a motion will be made on behalf of the above-named defendant to the judge of this court, at his chambers in the Court House, in the City of Hamilton (*or as the case may be*), on the day of , 18 , at ten o'clock in the forenoon, or so soon thereafter as the

motion can be heard, or an order under the 108th section of The Division Courts Act, directing a statement to be furnished to me of the names of all the persons who are co-partners in the firm of A.... B.... & Co., the above-named plaintiffs. That on such application will be read the affidavits of , copies of which are thereto annexed.

Dated, etc.

Yours, etc.,

M.... N....,

Solicitor (or agent) for the defendant E.... F....

To Mr. X.... Y....,

The plaintiff's solicitor (or agent, as the case may be).

---

211. FORM OF ORDER FOR STATEMENT OF THE NAMES OF ALL THE PERSONS WHO ARE CO-PARTNERS IN THE PLAINTIFF'S FIRM.

(*Title of Court and Style of Cause.*)

Upon the application of the above-named defendant in this cause, and upon reading the affidavit of service of demand herein, and of (if any other affidavit filed), and upon hearing the parties by their solicitors (*or* agents) ;

It is ordered that the above-named plaintiffs do, within days of the service of this order, furnish to the defendant, his solicitor or agent, a statement of the names of all the persons who are co-partners in the firm of A.... B.... & Co., the above-named plaintiffs.

(*Any other terms may be here added.*)

Dated, etc.

.....

Judge.

CERTIFICATES AND ORDERS OF CLERK AND JUDGE.

212. CERTIFICATE UNDER SECTION 45.

{Seal.}

I, A.... B ..., Clerk of the Division Court, in the County of , do hereby certify as follows :—

That in the procedure book of the said Division Court the following entries (and no others) appear in a certain cause in the said Division Court wherein one C. .. D.... is plaintiff and one E.... F.... is defendant, which said entries are in the words and figures following, that is to say : (*here copy entries verbatim*).

And I further say that the page of the said procedure book on which said entries are made is signed with the name of ; and such signature is of the proper handwriting of me, A.... B...., as such clerk (*or* of G.... H...., the then clerk) of the said court.

Given under my hand and the seal of the said court this day of , A.D. 18 .

A.... B....,

Clerk of said Division Court.

213. CLERK'S CERTIFICATE OF PROCEEDINGS TO COURT OF APPEAL

(*Title of Court and Style of Cause.*)

I, , Clerk of the said court, do hereby certify to the Court of Appeal for the Province of Ontario that the annexed papers contain true and examined copies of the summons in this cause, with all notices endorsed thereon, the claim, and any notice or notices of defence and of the evidence and all objections and exceptions thereto, and of all motions or orders made, granted, or refused herein ("together with such notes of the judge's charge as have been made, if the cause tried by a jury"), the judgment or decision in writing (*or* "the notes thereof"), and all affidavits filed or used in the cause, together with all other papers filed in the cause affecting the question raised by the appeal.

Given under my hand and the seal of the said court this day of , A.D. 18 .

Seal.

....., *Clerk.*

---

214. CERTIFICATE OF JUDGE AS TO EXCEPTION IN EXEMPTION LAW, WHERE DEBT IS CONTRACTED PRIOR TO THE FIRST DAY OF OCTOBER, 1887.

I, , Judge of the Division Court for the County of , do hereby certify, under the provisions of chapter 64, section 7, of the Revised Statutes of Ontario, that this writ of execution is for the recovery of a debt contracted before the first day of October, 1887, as appears by the papers on file herein.

Dated the day of , 18 .

....., *Judge.*

(*The above certificate to be endorsed on the execution.*)

---

215. SUMMONS TO CHANGE THE PLACE OF TRIAL, UNDER SECTION 86.

(*Insert title of Court and Style of Cause.*)

Upon reading the affidavit of the defendant, and upon hearing him by his solicitor (*or* agent), let the above-named plaintiff, his solicitor or agent, attend me at my chambers, at , on the day after the day of service hereof, at of the clock in the forenoon of the same day, or at such other time and place as chambers may be held, to show cause why the place of trial of this cause should not by order be changed to the sittings of the Division Court for the County of , pursuant to the 86th section of The Division Courts Act; and why such order should not direct the trial of this cause to be had at the next sittings of that court, to be held on the day of next, subject to all the rights of postponement.

Dated at Chambers, this day of , A.D. 18 .

....., *Judge.*

(*Instead of using this form and proceeding by judge's summons, the defendant may apply by serving notice of motion and copy of the affidavit on the plaintiff.*)

216. ORDER CHANGING THE PLACE OF TRIAL, UNDER SECTION 86.

(*Insert title of Court and Style of Cause.*)

Upon reading the affidavit of the defendant herein, and upon hearing the parties by their solicitor (*or* agent),

I do hereby order that the place of trial of this cause be changed to the sittings of the Division Court of the County of , pursuant to the 86th section of The Division Courts Act; and I further order and direct that the cause shall be tried at the (next) sitting of that court, to be held on the day of next, subject to all rights of postponement.

Dated at Chambers, this day of , A.D. 18 .

....,
Judge.

217. ORDER TO CONTINUE PROCEEDINGS FOR OR AGAINST A NEW PARTY.

(*Title of Court and Style of Cause.*)

Upon hearing C.... L. .., who alleged (*state circumstances rendering the order necessary or proper*),

It is ordered that the proceedings in this action be carried on between (*name the continuing or new parties, as the case may be, whether as plaintiffs or defendants*) and H.... R.... (the person upon whom the interest has devolved, *or* to whom an interest has been assigned).

Date.

....,
Judge.

CHANGE OF PARTIES.

218. ORDER TO PROCEED AFTER THE DEATH OF A PLAINTIFF AFTER JUDGMENT.

(*Title of Court and Style of Cause.*)

Upon reading the affidavit of

It is ordered that E.... Y...., the executor (*or* administrator) of A.... B...., the plaintiff in this action, who has died since judgment herein, be substituted as plaintiff for the original plaintiff, and be at liberty to issue execution against the defendant (*or* take any such proceedings as the deceased plaintiff was entitled to take against him) for the amount of the unsatisfied judgment and costs [*or* that the question whether the said E.... Y...., as executor (*or* administrator) of the original plaintiff, now deceased, is entitled to recover the amount of the judgment obtained against C.... D...., the defendant], shall be tried by action to be commenced by plaint in the ordinary way, wherein the said E.... Y.... shall be plaintiff and the said C.... D...., defendant, by such names and descriptions as aforesaid.

Date, etc.

....,
Judge.

219. ORDER TO PROCEED AFTER CHANGE OF INTEREST BY ASSIGNMENT OR OTHERWISE AFTER JUDGMENT.

(*Title of Court and Style of Cause.*)

Upon reading the affidavit of

It is ordered that E.... N...., the assignee (*or as the case may be*) of the judgment obtained by A.... B...., the plaintiff (*or* C.... D...., the defendant, *as the case may be*), in this action, be substituted as plaintiff (*or* defendant) in the name by the description of E.... N...., of, etc., the assignee of A.... B...., the plaintiff (*or* C.... D...., the defendant) herein, and that he in and by such name and description be at liberty to issue execution.

(*Conclude as in preceding form* 218.)

NOTE.—No proceedings under a judgment or order, either by judgment summons or otherwise, can be taken after any change of interest in the parties entitled to the benefit of the judgment or order without an order in one of the foregoing forms.

---

220. RETURN BY JUDGE TO CERTIORARI.

In the High Court of Justice, Queen's Bench Division (*or as the case may be*).

The answer of me, A.... B...., Judge of the County Court of the County of , who, by virtue of this writ, to me directed and delivered, do, under my hand and seal, certify unto Her Majesty, in her High Court of Justice for Ontario, at Toronto, the (*here describe what the writ calls for*), of which mention is made in the same writ. The return to this writ further appears by a certain schedule annexed thereto.

In witness whereof, I, the said A.... B...., have to this affixed my hand and seal this day of , 18 .

A.... B.... [L.S.]

(*The following schedule will be annexed to the certiorari*:—)

SCHEDULE.

Referred to in the return to the annexed writ of *certiorari* indorsed thereon.

(*Here give in regular order the papers in the suit returned with the certiorari, and annex the original papers to the schedule.*)

A.... B....,
Judge of the County Court of the County of .

MISCELLANEOUS FORMS.

221. List of Unclaimed Moneys Verified.

List of unclaimed moneys paid into court or to me as clerk thereof, which remain unclaimed for sixty years, ending on the 31st day of December last past:

For whom or on whose account money paid.	When paid.	Style and No. of Suit.	Amount. $ cts.

I, X.... Y...., Clerk of the Division Court, in the County of , make oath and say:—That *the foregoing return is full and correct in every particular* (*or if no moneys remain unclaimed, instead of the matter between the asterisks, say*, "No such moneys paid into court, or to me as clerk, therefore remain unclaimed for six years next before 31st day of December last past").

Sworn, etc.

X.... Y....,
Clerk.

222. Pay List of Jurors.

Summoned to attend at a sitting of Division Court of the County of on the day of , A.D. 18 , and judge's certificate to county treasurer.

No. on list.	Names of Jurors.	Date of Service.	Attendance.		Amount paid each Juror.		Signature of Juror acknowledging receipt of money.
			First day.	Second day.	$	c.	
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
	Total amount paid by Clerk.....$						

I, , presiding judge of the above-mentioned court, do hereby, in pursuance of the 172nd section of The Division Courts Act, certify to the treasurer of the said County of that the above is a true statement of the amount paid by the clerk of the said court to each of the jurors mentioned in the above list, who were summoned and attended said sittings, and neither of whom so attended as a witness in any cause or as a litigant in his own behalf, amounting in the whole to $.

Dated this day of , 18 .

....., *Judge.*

CROSS JUDGMENTS.

223. Notice of Application, under Section 213, for Judge's Order for Cross Judgment to be Set Off.

(*Insert title of Court and Style of Cause.*)

Take notice that application will be made to the judge on the day of , 18 , at his chambers in , at the hour of o'clock a.m., for an order directing that the cross-judgments which have been entered between the parties in these causes be set off, the one against the other, and that satisfaction of the judgments so set off be entered by the clerk in the procedure book, as directed by the 213th section of the Act.

Dated, etc.

Yours, etc.,

.....

This notice to be served by the party making the application.

224. JUDGE'S ORDER, UNDER SECTION 213.

(*Insert title of Court and Style of both Causes.*)

Upon reading the notice served upon the defendant (*or* plaintiff) in this cause and the affidavit of service thereof, and upon the application of , the plaintiff (*or* defendant), in the first cause above named, and the defendant (*or* plaintiff), in the second cause above named (*or as the case may be*), and no cause appearing to the contrary, I do order that the cross-judgment between the parties in these causes be set off, the one against the other, and that , who has obtained judgment for the larger sum, shall have execution only for the balance over the smaller judgment, and that the clerk do make in the procedure book in both the said causes an entry of this order, and also enter a satisfaction on the judgment for the smaller sum; but if both sums are equal, that he do enter in the procedure book satisfaction of both judgments, and that execution thereon be stayed.

Dated, etc.

....., *Judge.*

Form .

225. ENTRY OF SATISFACTION OF SMALLER JUDGMENT, UNDER SECTION 213.

Satisfaction is entered under section 213 in this action, by setting off judgment between the same parties in suit No. , 18 , by judge's order.

Form .

226. ENTRY OF PARTIAL SATISFACTION ON LARGER JUDGMENT, UNDER SECTION 213.

Satisfaction is entered for $, part of the amount adjudged to the plaintiff (*or* defendant) by judge's order under section 213, by setting off the amount adjudged against him in favor of the plaintiff (*or* defendant) in suit between them numbered , 18 , and it is further ordered that the plaintiff (*or* defendant) do have execution only for $, the balance over the said judgment.

---

227. REQUEST OF CREDITOR FOR DISCHARGE OF DEBTOR ARRESTED ON WARRANT OF COMMITMENT.

(*Insert title of Court and Style of Cause.*)

I, the undersigned A.... B...., the plaintiff (*or* the beneficial plaintiff) in this action, request that the defendant, if still in custody, may be discharged (*or*, if not in custody, that he be not arrested).

A.... B....

To the clerk or to the bailiff of the said court.

228. CERTIFICATE FOR DISCHARGE OF A PARTY FROM CUSTODY.

No. , A.D. 18 .

(*Insert title of Court and Style of Cause.*)

I, X.... Y...., certify that the defendant, now in your custody under warrant of commitment in this cause, has, since the issuing of the said warrant, satisfied the moneys for the non-payment whereof he was so committed, together with all costs and charges in respect thereof; and the said defendant may, in respect of such warrant, be forthwith discharged from and out of your custody.

Given under the seal of the court this day of , A.D. 189 .

{ Seal. }

X.... Y....,
Clerk.

To the gaoler of the common gaol of the County of

---

229. CONFESSION OF DEBT, AFTER SUIT COMMENCED.

In the Division Court, in the County of

Between A.... B...., *Plaintiff*,
and
C.... D...., *Defendant.*

I acknowledge that I am indebted to the plaintiff in the sum of , and consent that judgment for that amount and costs may be entered against me in this cause, according to the practice of the court.

Dated the day of , 18 .

C.... D....

Witness :
Clerk (*or* Bailiff).

---

230. ADMISSION OF CLAIM OR PART OF CLAIM, UNDER SECTION 113 OF THE ACT.

(*Title of Court and Style of Cause.*)

I, the defendant, having filed a notice of defence in this action, withdraw such defence and consent that judgment be entered against me, and I do hereby confess and admit that the sum of $, the amount claimed (*or* the sum of $, being part of the amount claimed by the plaintiff in this action), is due to him from me (and that I will pay the same by instalments of $).

Dated this day of , 189 .

Signed in the presence of }

(*This paper marked "A" is the statement referred to in the annexed affidavit.*)

231. Affidavit of Signature to Admission.

(*Insert title of Court and Style of Cause.*)

I, , of , Gentleman, make oath and say:—That I was present on the day of , A.D. 189 , and did see the above-named defendant sign the statement hereunto annexed, marked with the letter "A," and that the name set to the said statement is in the handwriting of the defendant, and that the name set to the said statement as the witness attesting the same is in my handwriting.

(*Conclude as in other affidavit form.*)

BAILIFF'S FORMS.

232. Appraiser's Oath on Attachment Cases.

You, and each of you, shall well and truly appraise the property and effects mentioned in this inventory (*holding it in his hand*) according to the best of your judgment. *So help you God.*

---

233. Appraisement to be Indorsed on Inventory.

We, B.... B.... and B.... D...., having been duly sworn by the bailiff, V ... W...., to appraise the property and effects mentioned in the within inventory, to the best of our judgment, and having examined ths same, do appraise the same at the sum of $

Witness our hands this day of , A.D. 18 .

B.... B....
B.... D....

---

234. Notice of Sale.

By virtue of an execution issued out of the Division Court for for the County of , and to me directed, against the goods and chattels of , at the suit of , I have seized and taken in execution one bay horse, etc.

All which property will be sold by public auction, at , on the day of , 18 , at the hour of o'clock in the noon.

Dated day of , 18 .

V.... W....,
Bailiff.

RETURNS TO EXECUTIONS, ETC.

235. *Nulla Bona.*—The within defendant (*or* plaintiff) hath no goods or chattels in the said County of whereof I can make the moneys to be levied, or any part thereof, as within commanded.

Dated day of , A.D. 18 .

V.... W...., *Bailiff.*

---

236. *Feci.*—By virtue of the within execution, I have made of the goods and chattels of the defendant (*or* plaintiff) the moneys within mentioned, and have paid the same to the said clerk as within commanded.

Dated day of , A.D. 18 .

V.... W...., *Bailiff.*

---

237. *Any part made.*—By virtue of the within execution, I have made of the goods and chattels of the defendant (*or* plaintiff) $, and have paid the same to the said clerk, and the defendant (*or* plaintiff) hath no more goods or chattels in the said County of whereof I can make the residue of the said moneys, or part thereof.

Dated day of , A.D. 18 .

V.... W...., *Bailiff.*

---

238. WHEN RENT LEVIED BY BAILIFF.

By virtue of the within execution, I have made of the goods and chattels of the plaintiff (*or* defendant) $, part whereof, $, I have paid to O.... B...., landlord of said plaintiff (*or* defendant) for one quarter's rent in respect of premises when levy made; and a further part, $, I have retained as fees on execution. The residue, $, I have paid to the said clerk as within commanded.

Dated day of , A.D. 18 .

V.... W...., *Bailiff.*

239. FORM OF BAILIFF'S RETURN.

B.—This form is to be used in making returns under the 193rd General Rule, which rule is to be read and understood in connection with the provisions of The Division Courts Act, touching the execution and return of Writs of Executions, and with rule 194. As the return is made and sworn to every Court day, the dates are to be filled in as noted, viz.:—(*a*) The day next before the last Court day; (*b*) the day on which return made; and note further—(*c*) when process is other than a Writ of *Fieri Facias*, it should be so noted; (*d*) in this column is to be set down the particular return made, with any other information necessary to show the due and faithful discharge of duty by the Bailiff in respect to each cash case.

RETURN OF V.... W...., Bailiff of the Division Court, in the County of , made in pursuance of the Rules of Practice touching all Warrants, Precepts, and Writs of Execution, acted on or in hand, between the (*a*) day of A.D. 18 , and the (*b*) day of , A.D. 18 .

Numbers.	Style of cause.	When Writ of *Fieri Facias* received. (*c*)	Amount to be levied.	Amount levied.	When levied.	Amount of Bailiff's charges.	Amount paid to Clerk.	When paid.	Remarks.
		A.D. 189 .	$ c.	$ c.	A.D. 189 .	$ c.	$ c.	A.D. 189 .	

I, V.... W...., above named, make oath and say :—That the foregoing return is full, true, and correct in every particular.

Sworn before me at , in the County of , this day of , A.D. 18 .

X.... Y...., *Clerk.*

V.... W...., *Bailiff.*

N.B.—The foregoing return will serve as a guide for the form and mode of ruling "The Bailiff's Process Book."

APPEALS.

DITCHES AND WATERCOURSES.

The following shall be the forms used in appeals in proceedings under The Ditches and Watercourses Act, R.S.O., cap. 220.

240. Notice of Appeal under Section 11.

To R.... S...., the Clerk of the municipality of the Township of in the County of

Whereas, under The Ditches and Watercourses Act, A.... B...., of the of in the County of , the engineer appointed by the said municipality of the Township of to carry out the provisions of the above Act, did make his award in writing bearing date the day of , 18 , which award, with the plan and profile referred to therein (*or as the case may be*), was filed in your office on the day of , 18 .

Take notice that I, C.... D...., of the of , in the County of , am a party interested and affected by the matters set forth and determined by the said award, and I am dissatisfied with the said award, and that the amount involved in this, my complaint, exceeds $20. I do, therefore, hereby appeal from the said award to the judge of the County Court of the County of , being the county in which the lands affected by the said award are situate, and the grounds of my appeal are as follows :—

In and by the said award it is provided (*here set forth so much of the award as is complained of*).

I object to the said award in this :—

1st, That I receive no benefit whatever from the said ditch or drain (*as the case may be*) ; *or*, 2nd, That I am required by the said award to open up and maintain a much larger proportion of the said ditch or drain than is my just share in proportion to the benefits I shall derive from the said ditch or drain. 3rd, That the sum of $ apportioned against me as my share of the costs of the said engineer is in excess of what should be my just proportion thereof.

(*Here set forth any other grounds of appeal that are relied on, or substitute any other grounds in place of the above, which are merely given as examples.*)

Dated this day of , 18 .

C.... D....

Note.—*If there be more than one appellant, and they desire to join in the appeal, the above notice will be changed accordingly.*

---

241. Order by Judge for Trial of Appeal and for Deposit to be made by Appellant under Section 11, Sub-Sections 2 and 3.

In the Division Court for the County of

In the matter of the appeal by C.... D.... against the award of A.... B... , the engineer appointed by the municipality of the Township of in the County of , under The Ditches and Watercourses Act.

I hereby order and direct that the said appellant, C.... D...., do within six days deposit with the clerk of the Division Court of the County of the sum of $ (*or such sum as may be ordered*), as an indemnity against the costs of the said appeal.

And upon such deposit being so made I order that the said appeal be tried at the sittings of the said court to be held in the Court Room in the of in the said county on the day of , 18 , at the hour of o'clock in the noon.

Dated this day of , 18 .

V.... W....,
County Judge.

To C.... D....,
Appellant; and
To X.... Y....,
Clerk of the said Court.

NOTE.—*Where the judge does not direct the deposit to meet costs the form will be varied.*

242. JUDGMENT BY COUNTY JUDGE ON APPEAL, SECTION 11, SUB-SECTION 4.

In the matter of the appeal of C.... D ... against A.... B...., the engineer appointed by the municipality of the Township of in the County of , under The Ditches and Watercourses Act.

The said appeal having come on for hearing before me this day of , 18 , at the sittings of Division Court for the County of (*or as the case may be*), in the presence of the said C.... D...., and all other parties interested (*name the other parties if judgment affects them, and if any of them are not present state their absence*), after hearing what was alleged by the said C.... D...., and by the other parties affected by the said award, I do order and adjudge that the said award be and the same is hereby confirmed (*or insert after the word award,* "be set aside," *or* be altered and amended, as follows :) (*here set out the particular alterations*), and I direct that the same be certified by the clerk of this court to the clerk of the said municipality.

And I tax and fix the costs of this appeal at $, including $, my expenses herein, which said costs I order to be paid by the said C.... D.... (*or* to be paid and apportioned as follows :—) (*here state by whom and in what proportions the costs are to be paid*). The said sum of $, being my said expenses, to be paid in the first instance by the said municipality. (Statute of 1890, c. 67.)

Dated this day of , 18 .

V.... W....,
County Judge.

243. DIVISION COURT CLERK'S CERTIFICATE OF AWARD AS AMENDED (OR CONFIRMED) BY THE COUNTY JUDGE, TO BE SENT TO THE CLERK OF THE MUNICIPALITY.

In the Divisional Court of the County of

In the matter of the appeal of C.... D.... (*as in form*).

The following is a copy of the judgment given by the judge of the County Court of the County of on the hearing of the above appeal.

(*Here copy the judgment.*)

I hereby certify that the award of the said A.... B...., the engineer appointed by the said municipality of the Township of , has by the said judgment been confirmed (*or* has by the said judgment been altered and amended as set forth in the said judgment), and that the costs of and incidental to the said appeal allowed by the said judge are set forth therein, and the parties by whom the same are ordered to be paid.

Dated this day of , 18 .

X.... Y...., *Clerk.*

To R.... S..., *Clerk of the said Municipality.*

NOTE.—*If award set aside this form will be varied accordingly.*

APPEALS UNDER THE LINE FENCES ACT.

244. NOTICE OF APPEAL.

To A.... B...., C.... D...., and E.... F...., three fence-viewers of the Township of , in the County of , and G.... H...., of the same place.

Take notice that I, J... K...., of the of , in the County of , being the person affected by the said award hereinafter mentioned, and being dissatisfied with the said award, do intend to prosecute an appeal to the County Judge of the County of against an award made under The Line Fences Act by the said A.... B...., C.... D...., and E. .. F...., three fence-viewers as aforesaid (*or as the case may be*), dated the day of , 18 , whereby I, the said J.... K.... (*here set out the award, or such portion of it as is complained of*).

And, further, take notice that the cause and matter of my appeal are :—

First (*here set out in detail all the grounds of complaint against the said award*).

Dated this day of , 18 .

J.... K....

245. ORDER BY JUDGE FOR DEPOSIT BY APPELLANT AND FOR TRIAL OF APPEAL UNDER THE LINE FENCES ACT.

In the matter of the appeal by J.... K... against the award of A.... B...., C.... D...., and E.... F...., three fence-viewers of the Township of , in the County of

I hereby order and direct that the said appellant, C. .. D...., do, within six days, deposit with the clerk of the Division Court of the County of the sum of $ (*or such sum as may be ordered*), as an idemnity against the costs of the said appeal.

And upon such deposit being so made, I order that the said appeal be tried at the sittings of the said court, to be held at the Court Room, in the of , in the said county, on the day of , 18 , at the hour of o'clock in the noon.

Dated this day of , 18 .

V.... W....,
County Judge.

To J.... K....,
The above appellants; and
To X.... Y....,
The clerk of the said court.

NOTE.—*Where the judge does not direct the deposit to meet costs the form will be varied.*

---

246. JUDGMENT BY COUNTY JUDGE ON APPEAL UNDER THE LINE FENCES ACT.

In the Division Court, in the County of

In the matter of appeal by J.... K.... against the award of A.... B...., C.... D...., and E.... F... , three fence-viewers of the Township of , in the County of , under The Line Fences Act.

The said appeal having come on for hearing before me this day of , 18 , at the sittings of the Division Court for the County of (*or as the case may be*), in the presence of the said J.... K...., and all the parties interested (*name the other parties if judgment affects them, and if any of them are not present state their absence*), after hearing what was alleged by the said J.... K...., and by the other parties affected by the said award, I do order and adjudge that the said award be and the same is hereby affirmed (*or insert after the word award*, "be set aside," *or* "be altered and amended as follows":—) (*here set out the particular alterations*).

And I direct that the same be certified by the clerk of this court to the clerk of the said municipality.

And I tax and fix the costs of this appeal at $, including $ my expenses herein, which said costs I order to be paid by the said J.... K.... (*or* "to be paid and apportioned as follows":—) (*here state by whom and in what proportions the costs are to be paid*). The said sum of $, being my said expenses, to be paid in the first instance by the said municipality.

(Statute of 1890, c. 67.)

Dated this day of , 18 .

V.... W....,
County Judge.

FORMS FOR APPEALS UNDER MASTER AND SERVANT ACT AND TAX ON DOGS ACT.

247. Notice of Appeal under Master and Servant Act, R.S.O., Cap. 139.

To A.... B...., of, etc. (*the name and addition of the party to whom the notice of appeal is required to be given*).

Take notice, that I, the undersigned C.... D...., of, etc., being the person aggrieved by the order hereinafter mentioned, do intend to enter and prosecute an appeal at the (next) sittings of the Division Court for the County of , to be holden at , on the day of next (*or* "instead"), against a certain order made by L.... M...., Esq., one of Her Majesty's Justices of the Peace in and for the (said) County of (*or* Police Magistrate in and for the City (*or* Town) of), whereby I, the said A.... B...., was ordered to pay (*here state the terms of the order made as fully and correctly as possible*).

And, further, take notice that the cause and matter of my appeal are, first, that [I never was indebted to the said A.... B.... for the said amount of wages so ordered to be paid by me; secondly, that before the proceedings were taken upon which the said order was made, I paid the said A.... B.... the wages in said order mentioned, *together with any other cause or matter of appeal, care being taken that all grounds of appeal relied on are stated, as the appellant will be precluded from going into any other than those stated*].

Dated this day of , A.D., 18 .

A.... B....

NOTE.—*The above form may be varied to suit the case where the appeal is against an order of dismissal or other decision of the justice.*

---

248. Appeal Bond or Appeal against an Order for Payment of Wages under Master and Servant Act, R.S.O., Cap. 139.

Know all men by these presents, that we, C.... D...., of, etc., and E.... F...., of, etc., and G.... H...., of, etc., are jointly and severally held and firmly bound to A....B...., of, etc., in the final sum of one hundred dollars of lawful money of Canada, to be paid to the said A.... B...., or his certain attorney, executors, administrators, or assigns, for which payment, well and faithfully to be made, we bind ourselves, and each and every of us in the whole, our and each and every of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of , in the year of our Lord, one thousand eight hundred and .

Whereas the said A.... B...., on the day of , instant (*or* "last past"), made complaint against the said C.... D...., before L.... M...., one of Her Majesty's Justices of the Peace in and for the County of (*or* the Police Magistrate in and for the City (*or* Town) of), for the alleged non-payment of wages by the said C.... D.... to the said A.... B....

And whereas the C.... D.... was, on the day of , instant (*or* "last past"), by the said L.... M...., or such justice as aforesaid (*or* "as such police magistrate"), ordered to pay to the said A.... B.... the sum of (*here fully and particularly state the substance of the order*).

And whereas the said C.... D...., being dissatisfied with the decision of said complaint, and with the said order made thereon, is desirous of appealing against the same to the Division Court for the (said) County of , at its (next) sitting, to be held on the day of next (*or* instant), and, in pursuance of the statute in that behalf, this bond is given as security to such appeal.

And whereas the above bounden E.... F.... and G.... H...., at the request of the said C.... D...., have agreed to enter into the above-written obligation, for the purposes aforesaid.

Now, therefore, the condition of this obligation is such, that if the above bounden C.... D.... shall personally appear at the said court and try such appeal, and abide the judgment of the court thereon, and pay such costs as shall be by the said court awarded, then that this obligation shall be void; otherwise the same shall remain in full force and effect.

Signed, sealed, and delivered by the above bounden C... D..., E.. F .., and G... H. ., in the presence of J... K...

C.... D.... { Seal. }

E.... F.... { Seal. }

G.... H.... { Seal. }

(*The above form can be altered to suit the circumstances of any particular case.*)

---

249. APPROVAL OF APPEAL BOND BY THE CLERK, TO BE ENDORSED ON BOND.

I approve of the within bond and of the sufficiency of the sureties therein named.

Dated this day of , 18 .

X.... Y....,
Clerk.

(*When required by the clerk, affidavit of justification must be made, and form* 35 *for affidavit of execution of the bond.*)

---

250. DEMAND OF JURY, UNDER MASTER AND SERVANT ACT AND TAX ON DOGS ACT.

In the Division Court, in the County of

A.... B...., *Appellant*,
v.
C.... D...., *Respondent.*

Take notice that I hereby require a jury to be summoned in this appeal.

Dated this day of , A.D. 18 .

A.... B....,
Appellant.
or C.... D....,
Respondent.

To the Clerk of this Court.

THE INDUSTRIAL SCHOOLS ACT.

251. Summons for Maintenance.

(*Title of Court and Style of Cause.*)

You, the above-named defendant, are hereby summoned to appear at in the County of on the day of , A.D. 18 , at the hour of o'clock in the forenoon, to answer the allegation of the plaintiff that you, the same defendant, are liable for the expense of maintaining one E.... D...., a boy detained in the Industrial School under the charge of the above-named plaintiffs in the Village of Mimico, in the County of York, a copy of which is hereunto annexed.

And, further, you are hereby required to take notice that the plaintiffs claim that you are able to pay the sum of $ per week towards the said expenses, and that if you do not appear at the said time and place such order will be made in your absence as may seem just.

Given under the seal of the court and dated this day of A.D. 18 .

R.... R...., *Clerk.*

---

252. Order of Parent, Step-parent, or G'ardian, for the Payment of Weekly Sum for Maintenance of Child.

On the complaint of the Victoria Industrial School Association of the City of Toronto (*or* of the School Corporation or Philanthropic Society—*mentioning its corporate name*), *or* of A.... B...., the agent of the (*here name the corporation or society of which he is agent*), the defendant having been summoned to appear at a sittings of the said court on the day of 18 , at in the said County , to answer the said complaint and the allegation that the defendant is liable for the expense of maintaining one C.... D...., a boy detained in the said Industrial School (*or* name the society) under the charge of the plaintiffs in the Village of Mimico, in the County of York, and it being found that the defendant is able to pay the sum of $ per week towards the said expenses, it is therefore adjudged and ordered that the defendant do pay the plaintiffs the sum of weekly, as follows, viz.: (*here state the time and manner of such payments*).

---

253. Form of Complaint.

(*Title of Court and Style of Cause.*)

The plaintiff alleges that E.... D.... is a child, who is and has been detained in the certified Industrial School under the charge of the plaintiffs for weeks, in the Village of Mimico, in the County of York, the defendant is the parent (*or* guardian, *or* step-parent, of the said E.... D....) and is liable for the expense of maintaining the said child, and they claim that the defendant is able to pay the sum of $ per week towards the said expense, and does not pay the same, but refuses to do so, and hereby apply for an order in that behalf.

Sealed with the seal of the corporation this day of , A.D. 18 .

R. L. N.,
President or Agent or Secretary or Treasurer
of the said Corporation.

{ Corporate Seal. }

ADDITIONAL DIVISION COURT FORMS

254. Particulars of Plaintiff's Claims.

(*Where the proceeding is by ordinary summons.*)

(1) A.... B...., of , claims from C.... D...., of , $60 for damages* for breach of a contract to employ the said A.... B... as a traveller, which contract may be briefly stated as follows: (*here state the contract*).

Or, (2) * For wrongful dismissal from the defendant's employment as traveller (and $ for arrears of wages).

Or, (3) * For the defendant's wrongfully quitting the plaintiff's employment as manager.

Or, (4) * For breach of duty as factor (*or as the case may be*) of the plaintiff, and $ for money received as factor (*or as the case may be*).

Or, (5) * For breach of the terms of a deed of apprenticeship of X.... Y.... to the defendant (*or* plaintiff).

Or, (6) * For non-compliance of the written award of X.... Y...., bearing date the day of , 189 (*here state the matter of non-compliance complained of*).

Or, (7) * For negligence in the custody of goods (and for wrongfully detaining the same).

Or, (8) * For negligence in the keeping of goods pawned (and for wrongfully detaining the same).

Or, (9) * For negligence in the custody of furniture let on hire (*or* a carriage loaned).

Or, (10) * For wrongfully neglecting (*or* refusing) to pay the plaintiff's cheque.

Or, (11) * For breach of a contract to accept the plaintiff's draft.

Or, (12) * Upon a bond conditioned not to carry on the trade of a .

Or, (13) * For refusing to carry the plaintiff's goods by railway.

Or, (14) * For refusing to carry the plaintiff by railway.

Or, (15) * For breach of duty in and about the carriage and delivery of coals by railway.

Or, (16) * For breach of duty in and about the carriage and delivery of machinery by sea.

Or, (17) * For wrongfully depriving plaintiff of goods—household furniture, etc.

Or, (18) * For improperly distraining plaintiff's goods.

Or, (19) * For fraudulent misrepresentation on the sale of a horse (*or* a business, *or* shares, *or* etc.).

Or, (20) * For fraudulent misrepresentation of the credit of A.... B....

Or, (21) * For breach of a contract of guarantee for A.... B....

Or, (22) * For breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

Or, (23) * For breach of a contract to keep a house in repair.

Or, (24) * For breaches of covenants contained in the lease of a farm.

Or, (25) * For injury by the defendant's dog.

Or, (26) * For injury to the plaintiff (*or*, if by husband and wife, to the plaintiff, C.... D....) by the negligent driving of the defendant or his servants.

Or, (27) * For injury to the plaintiff at the defendant's railway station, from the defective condition of the station.

Or, (28) * For breach of contract to accept and pay for goods.

Or, (29) * For non-delivery (*or* short delivery, *or* defective quality, *or* other breach of contract of sale) of cotton, etc.

Or, (30) * For breach of warranty of a horse.

Or, (31) * For breach of contract to let (*or* take) a house.

Or, (32) * For wrongfully entering plaintiff's land and drawing water from his well (*or* cutting his grass, *or* cutting down his timber, *or* pulling down his fences, *or* removing his gate, *or* using his road *or* path, *or* crossing his field, *or* depositing sand there, *or* carrying away gravel from thence, *or* carrying away stones from his river).

Or, (33) * For wrongfully diverting (*or* obstructing, *or* polluting, *or* diverting water from) a watercourse.

Or, (34) * For wrongfully discharging water upon the plaintiff's land (*or* into the plaintiff's mine).

Or, (35) * For wrongfully obstructing the plaintiff's use of a well.

Or, (36) * For loss of the plaintiff's goods in the defendant's inn.

Or, (37) * For that the said C.... D.... detained from the said A.... B.... his goods and chattels; that is to say, a horse named "Bob Foster," also a harness and sulky. The said A. .. B.... claims a return of the same, or their value, and $60 for their detention.

(*Any of the foregoing forms of particulars of causes of action may be used as forms for counterclaim, reserving the names of parties.*)

---

255. PARTICULARS OF PLAINTIFF'S DEMAND FOR NUISANCE AND INJUNCTION.

(*Commence as in particulars of other actions and proceed thus :*—)

For damages suffered by him at his dwelling house, number 6 Essex Street, in the City of Guelph, from offensive and pestilential smells and vapors caused by the defendant, $60.

The plaintiff also claims an injunction to restrain the defendant from the continuance or repetition of the said injury, or the committal of any injury of a like kind in respect of the same property.

A.... B.. ,
Plaintiff.

(NOTE.—*This last clause may be inserted as part of the claim and attached to the particulars in any other form of action suited to the circumstances, when it is intended to apply for a permanent injunction at the trial of the cause.*)

---

256. MEMO. TO BE ENDORSED ON GARNISHEE SUMMONS UNDER 57 VICT., C. 23, S. 17, WHEN PRIMARY DEBTOR IS UNMARRIED AND HAS NO FAMILY DEPENDING UPON HIM FOR SUPPORT.

The said primary debtor is an unmarried person, having no family depending on him for support.

A.... B....,
Solicitor for Primary Creditor.

---

257. AGREEMENT TO GIVE JURISDICTION TO A DIVISION COURT.

We (*or* the respective solicitors of), A.. B..., of , and C... D. ., of , do hereby agree that the court in the County of shall have power to try an action to be brought by A.... B.... against C.... D.... for [illegible] , under the provisions of section 70 of The Division Courts Act, as amended by 56 Vict., c. 15, s. 1.

Witness our hands this day of , 18 .

A.... B.... (*or* E.... F....,
Solicitor for A.... B...).
C.... D.... (*or* G.... H....,
Solicitor for C.... D....).

Section 100. Rule 20.

258. Affidavit for Order for Substitutional Service.

(*Commence as in form* 22.)

I, E....F ...., of the of , in the County of , Bailiff of the above-mentioned court (*or as the case may be*), make oath and say :—

1. That on or about the day of , last past (*or* instant), I received from the clerk of this court the annexed summons and particulars of claim thereto attached for service on the above-named defendant.

2. That, in accordance with my duty in that respect, I did, on the day of , instant (*or* last past), attend at his place of residence, at the of , and, on enquiring there for the said defendant, was informed by a person at and in the said place of residence, who represented herself to be, and whom I believe to have been, the wife (*or as the case may be ; and if the name of the other person is known it had better be stated*) of the said defendant, that the said defendant was not at home (*here state the answer given*), and I then stated to the said person the nature of my business, and told her (*or* him) that I called to serve the defendant with the said summons and claim, and that I would call again for that purpose, at the said place of residence, on the day of , then next, at or about of the clock, in the noon.

(*Here state what calls and other attempts were made to effect service, what, if anything, was done, and what the wife or other members of the family said in reply to the questions asked about the defendant : the affidavit should here state when he absconded, and where he has gone to, if that can be ascertained, and his post office address there, and for what purpose or with what object he went away. The post office address of the defendant while he lived in Ontario should also be given, and generally such facts and circumstances should be shown as to make a judge believe that all reasonable efforts had been made to effect personal service, and that either the summons had come to knowledge of defendant or that he wilfully evaded service of the same, or had absconded.*)

3. That I have used all due means in my power to serve the said defendant personally with a true copy of the said summons and claim, but have not been able to do so ; and, for the reason aforesaid, I verily believe that the said summons has come to the knowledge of the defendant (*or* that he wilfully evades the service of the same, *or* that he has absconded to (*naming the place particularly, if possible, to which he went, and when*).

Sworn, etc.

(*The affidavit should state that the calls have been made at the defendant's place of* RESIDENCE, *unless the defendant has no known place of residence, and that reasonable efforts had been made to ascertain it* (*Chitty's Forms, 13th ed.*, 75-79). *What the officer said* (*Dubois v. Lowther*, 4 *C.B.* 228) *and the answers to his enquiries* (*Fisher v. Goodwin*, 2 *C. & J.* 94) *should be distinctly stated in the affidavit.*)

Section 111.

259. Affidavit for Immediate Judgment.

(*Commence as in form* 22.)

1. That I am the above-named plaintiff (*or* one of the above-named plaintiffs) in this cause.

2. That this action was commenced on or about the day of , A.D. 18 , by a special summons duly issued out of this court, in pursuance of the 109th section of The Division Courts Act, for the sum of $.

3. That the annexed paper, marked "A," is a true copy of the particulars of the plaintiff's claim or demand in said action (*or* that the following is a true copy of the particulars of the plaintiff's claim or demand in said action (*giving in either case the particulars verbatim*).

4. That I am advised by the clerk of this court and verily believe said summons, together with a true copy of said particulars of claim or demand, and all notices and warnings required to be given, were duly served on the defendant in this cause.

5. That, subsequent to said service, the defendant left with the clerk of this court a notice in writing to the effect that he disputed the claim sued for herein, as I am informed by said clerk and believe.

6. That the defendant at the commencement of this action was, and still is, truly and justly indebted to me (*or* to the plaintiffs) in the sum of $ in respect of the matters in the said particulars of claim or demand mentioned.

7. (*Here state, as concisely as is consistent with clearness, the facts upon which the plaintiff's claim is founded. Mere matters of evidence need not necessarily be stated, but a good cause of action must be disclosed, and the plaintiff's claim in respect of it verified, and in some cases it may be advisable to state the evidence by which it is supported. The form of affidavit must necessarily vary according to the facts of each particular case. The statement of facts may be confined to one paragraph, or divided into several, as may be found most convenient. Each paragraph should contain, as far as possible, a separate allegation of fact. The affidavit should be made as strong as possible, and any facts tending to show an admission of the claim by the defendant should be distinctly stated.*)

8. In my belief, there is no defence to this action, and that the notice in writing left by the defendant with the clerk of this court, that he disputed the claim sued for herein, has been so left for purpose of delay only.

9. That the defendant has not left with the clerk of this court any notice to the effect that he disputes the jurisdiction of this court.

Sworn, etc. (*form* 22).

---

260. AFFIDAVIT TO SET ASIDE JUDGMENT AND BE ALLOWED TO DEFEND ON THE MERITS.

(*Commence as in form* 22.)

I, , of the of , in the County of , and Province of Ontario (*addition*), make oath and say :—

1. That I am the (*or* one of the) above-named defendant in this cause. (*If made by a solicitor or agent it may be in this form* :—That I am the solicitor (*or* duly authorized agent) of the above-named defendant in this cause, and, when not otherwise herein expressed, that I have a personal knowledge of the matters herein deposed to).

2. That the summons herein was served on me (*or* the above-named defendant, as I am informed and believe) on or about the day of , last past.

3. That notice disputing the plaintiff's claim (*or* of the Statute of Limitations, etc., *as the case may be, as mentioned in general rule* 20) was intended to be given herein, but (*here set out particularly the reason why such notice was not given in time, and accounting for the delay*).

4. That I have (*or* the said defendant has) a good defence to this action on the merits, as I am advised and verily believe (*or if made by a solicitor or agent* :—As I am instructed and verily believe), and such defence consists in this :— (*here particularly show one or more of the grounds of defence relied on, so that the judge may see that there is something to be tried should the application be granted*).

5. That the application to be made herein is not for the purpose of delaying the plaintiff in the recovery of judgment and execution against me (*or* the said defendant) in this cause, but solely for the purpose of my (*or* the above-named defendant) being allowed in to dispute the plaintiff's claim, and to defend this action on the merits aforesaid.

Sworn, etc.

261. AFFIDAVIT OF JUSTIFICATION OF SURETIES TO CLERK'S OR BAILIFF'S COVENANT.

County of } We, , of the of , in the
To wit : } County of , and , of the of ,
in the County of , within named, severally make oath and say :—

1. And first, I, this deponent (*naming him*), for myself, say, that I am a freeholder and resident within the County of

2. That I am one of the sureties mentioned in the annexed covenant, for the due performance by (*name of the clerk*) of the duties of the office of clerk of the Division Court for the County of

3. That I reside at , in the said , and am worth real property to the amount of dollars over and above all encumbrances, and over and above what will pay all my just debts, and every other sum for which I am now bail, or for which I am surety.

4. That I am not surety for any person except for the said .

5. And I, the said (*naming him*), for myself, say, that I am a freeholder and resident within the County of

6. That I am one of the sureties in the annexed covenant, for the due performance by (*name of the clerk*) of the duties of the office of clerk of the Division Court for the County of

7. That I reside at , and am worth real property to the amount of dollars over and above all encumbrances, and over and above what will pay all my just debts, and every other sum for which I am now bail, or for which I am surety.

8. That I am not surety for any public officer except for the said

The above-named deponents (*naming them*) were severally sworn before me at , in the County of , this day of , A.D. 18 .

A Commissioner for taking affidavits in and for the County of .

---

262. AFFIDAVIT OF SERVICE OF SUMMONS ON PARTNERSHIP FIRM.

(*Commence as in form* 22.)

That I did on the day of , A.D. 18 , duly serve the above-named partnership firm, the defendants in this cause, with, etc. (*as in form* 28, *according to the nature of the summons*), by delivering the same personally (*or as the case may be*) to K.... L...., who then was a partner in the said firm.

(*Then proceed to the close as in ordinary affidavits of service.*)

263. AFFIDAVIT FOR ORDER TO EXAMINE A SICK, AGED, OR INFIRM WITNESS.

(*Commence as in form* 22.)

1. This action is brought for (*here state concisely the cause of action sued for*).

2. The summons herein was served on or about the day of , A.D. 18 , and this action can be heard at the sittings of the court which will be held on the day of next (*or* instant).

3. The defendant has (*or, if he makes the affidavit*, I have) filed a notice disputing the plaintiff's claim herein.

4. That E.... F...., of, etc. (*a person residing within the province*), is a material and necessary witness on my behalf, as I am advised and verily believe, and I cannot safely proceed to the trial hereof without his evidence, and that the materiality of his evidence consists in this (*here in a general way describe it*).

5. That said E.... F.... is sick, being dangerously ill with (*here describe disease*) and not expected to recover (*or as the case may be, or* that he is aged, *or* infirm, being now years of age, *or* that he is about to leave the province, *as the case may be*), and that his attendance at court as a witness cannot by reason thereof be procured.

6. I am advised and believe that I have a good cause of action (*or* defence) herein on the merits, and that this application is made *bona fide* and not for the purpose of delay.

Sworn, etc. *form* 22).

(*The affidavit should clearly show that the person proposed to be examined is weak, aged, or infirm, or about to leave the province, and that his attendance at court as a witness cannot, by reason thereof, be procured. If possible, this should not be left to a general statement merely, but facts and circumstances should be given. If founded on sickness of the witness, an affidavit by or a verified certificate of the medical attendant should form part of the application, the former being preferable. The affidavit had better be made by the applicant, his solicitor or agent. As a general rule, the materiality of the proposed evidence need not be given as appears in the 4th paragraph ; but if the application is likely to be opposed, or there is anything exceptional in the circumstances, it had better be stated with particularity.*)

---

264. AFFIDAVIT FOR COMMISSION TO EXAMINE WITNESSES.

(*Commence as in form* 22.)

1. That this action is brought for the recovery of (*here state shortly the cause of action*).

2. That the defendant has filed a disputing notice herein.

3. That E.... F.... is a material and necessary witness for me in the said cause, and I am advised, and verily believe, that I cannot safely proceed to the trial of it without his evidence.

4. That the said E.... F.... is at present residing at , without the limits of the Province of Ontario. (*If made by the defendant, add the following:*—)

5. That I have a good defence to this action on the merits, as I am advised, and verily believe (*or, if made by a solicitor or his clerk, say :*—The defendant has, as I am instructed, and verily believe, a good defence, etc.).

6. This application for a commission is made *bona fide* for the purpose of procuring the evidence of the said , and not for delay.

Sworn, etc. (*form* 22).

265. AFFIDAVIT OF JUSTIFICATION BY SURETIES TO APPEAL BOND ON APPEAL FROM DIVISION COURT.

(*Commence as in form* 22.)

That I am a householder and housekeeper (*or* freeholder, *as the case may be*), residing at (*give particular description of the place of residence*).

That I am worth property to the amount of one hundred dollars over and above what will pay all my just debts. (*If bail or security in any other action, add:* And every other sum for which I am now bail or security.)

That I am not bail or security for any plaintiff or defendant except in this action (*or if bail or security in any other action or actions, add:* Except for A.... S...., at the suit of D.... E...., in the Court of , in the sum of $; for B.... M...., at the suit of S.... T...., in the Court of , in the sum of $, *specifying the several actions, with the courts in which they are brought, and the sum in which the deponent is bail or security*).

Sworn, etc.

---

266. AFFIDAVIT AFTER TRANSCRIPT HAS BEEN ISSUED UNDER SECTION 217.

(*Style of Court and Cause.*)

(*Commencement as in other affidavits.*)

1. That I have a personal knowledge of the facts connected with judgment rendered in this cause.

2. That the said judgment remains unsatisfied in the whole (*or* in part, *as the case may be, showing how much remains unpaid*).

That the execution issued in the Division Court, of the County of , to which a transcript was issued from this court, has been returned *nulla bona* (*or* I believe the defendant has not sufficient goods in that division to satisfy the said judgment).

(*Add final conclusions as in other affidavits, forms* .)

---

267. AFFIDAVIT FOR ORDER TO DISCHARGE PORTION OF DEBT FROM CLAIM OF PRIMARY CREDITOR.

(*Commence as in form* 44.)

1. I am the , and have a full knowledge of the accounts between the primary debtor and the garnishees.

2. That on the day of , A.D. 18 , the garnishees were indebted to the primary debtor in the sum of $

3. That the garnishee summons herein, I am advised and believe, was served on the garnishees on the day of , A.D. 18 .

4. That thereafter the garnishees filed through their solicitors with the clerk of this court, as I am advised and believe, an admission that they had in hand a sufficient sum to pay the amount of the primary creditor's claim and costs herein, and they consented to pay the same upon being advised of the true amount thereof after judgment therefor.

5. That the primary creditor has not accepted or rejected the said admission, as I am advised by the said solicitors.

6. The primary debtor is desirous of having the remainder of the moneys in the hands of the garnishees released from the garnishee summons herein.

7. The garnishees have no notice of any other claims upon or attachment of the said moneys.

Sworn, etc.

Rule 283.

268. Application for New Trial.

(*Court and Cause.*)

The above-named defendant hereby applies for a new trial of this action, and asks that judgment of non-suit be entered, or that the action be dismissed on the following among other grounds :—

1. The judgment was contrary to law and evidence and the weight of evidence.

2. The learned judge should have found that the claim of the plaintiff had been paid.

3. The learned judge should have found that the plaintiff's claim was barred by the Statute of Limitations.

4. A.... B.... was a necessary and material witness for the defendant, and the defendant was unable, notwithstanding reasonable diligence, as is shown by the affidavit hereto annexed, to obtain his attendance.

5. One A.... B...., whose affidavit is hereto annexed, could have given material evidence on behalf of the defendant, and the defendant did not know and could not by reasonable diligence have discovered that the said A.... B.... could have given such evidence prior to the trial.

6. The evidence given by C.... D.... at the said trial, and which was objected to by the defendant, was inadmissible, and should not have been received.

7. The evidence tendered by the defendant at the said trial, and which was rejected by the learned judge, should have been received.

(WHERE ACTION TRIED BY JURY.)

8. The learned judge was wrong in directing the jury that it was necessary for the defendant to produce a receipt showing the payment made by him.

9. The learned judge was wrong in directing the jury that in the absence of a written acknowledgment by the defendant the debt was barred by the Statute of Limitations.

And in support of such application the defendant annexes the affidavit of himself, and of A.... B.... and C.... D....

Dated, etc.

X.... Y....,
Defendant's Solicitor.

Vol. 1, page 191.

269. Affidavit to Obtain a Warrant to bring up a Prisoner.

I, , of , the plaintiff (*or* defendant), make oath and say :—That the above action is appointed to be tried at this court on the day of , A.D. 18 , and that E.... F...., now a prisoner confined in (*state the prison*), will be a material witness for me upon the said trial ; and I further say that I am advised and verily believe that I cannot safely proceed to the trial of the said action without the testimony of the said E.... F...., and I do hereby make application for a writ of *habeas corpus*, in order that the said E.... F.... may be brought before this court to be examined as a witness on my behalf.

270. SUMMONS UNDER SECTION 276 FOR ASSAULTING A BAILIFF OF THE COURT WHILST IN THE EXECUTION OF HIS DUTY.

In the Division Court, in the County of
In the matter of a complaint made by C.... D...., of , Bailiff of the said court, and section 276 of The Division Courts Act.

To A.... B...., of
You are hereby summoned to appear at a sitting of the Division Court to be holden at , on the day of , 18 , at o'clock in the forenoon, to answer a complaint made against you by C.... D...., the bailiff of the said court, and to show cause why an order should not be made against you, under the 276th section of The Division Courts Act, for payment of a sum not exceeding $20 for an assault committed by you on , the day of , upon the said bailiff whilst in the execution of his duty as such bailiff [and also for that you did on the same day rescue, or attempt to rescue, certain goods levied by the said bailiff under process of this court].

Dated this day of , 18 .

....,
Judge.

(*To be served personally ten clear days before the return day.*)

---

271. ORDER FOR SUBSTITUTIONAL SERVICE.

(*Court and Cause.*)

Upon reading an affidavit of of , in the County of , sworn the day of , 18 :—

It is ordered that the delivery of a copy of the summons issued in this action, to some adult inmate at the usual or last known place of residence or business of the above-named defendant C.... D...., situate and being at , in the County of (*or* that the delivery of a copy of the summons issued in this action to E.... F...., the agent of the defendant, at his office, as such agent in the of ; *or* that mailing of a copy of the summons issued in this action by letter, prepaid and registered, addressed as follows :— C.... D...., 109 Bathurst Street, Toronto ; *or* that notice of the issue of the summons in this action be published in the , and that the publication of such notice), shall be deemed to be good and sufficient service of the summons upon the said C.... D.... on the day of such delivery (mailing *or* publication).

It is further ordered that all further notices and orders in the suit, up to judgment, may be served in the same manner.

It is further ordered that a sealed copy of this order be delivered (*or* mailed) with the said copy of the said summons.

Dated this day of , 18 .

....,
Judge.

272. Summons to Clerk of Municipality.

In the Division Court, in the County of
In the matter of section 104 of The Division Courts Act, as amended by 52 Vict., c. 12, s. 21.

To A.... B...., Clerk of the Township of :—

Take notice that it is alleged that you have neglected or refused to furnish the clerk of this court, within the limits of which the municipality for which you are clerk is partly (*or* wholly) situate, with a correct copy of the voters' list of the said municipality, published in the present year, and you are hereby summoned to appear at the sittings of this court, to be holden at , in the said County of , on the day of , A.D. 18 , at the hour of o'clock in the noon, to show cause why you have refused or neglected to comply with the provisions of the 159th section of The Division Courts Act, as amended by 52 Vict., c. 12, s. 19.

....., *Clerk.*

---

273. Order Transferring Cause when entered in Wrong Court.

(*Court and Cause.*)

It appearing that this cause has been entered in the wrong Division Court I hereby order that all papers and proceedings in this cause be transferred to Division Court in the County of , in pursuance of section 87 of The Division Courts Act, upon the terms (that the defendant shall in no case have taxed against him or pay more costs than if he had been originally sued in such last-mentioned court, and that the plaintiff do pay to the defendant forthwith the sum of $ as fees for the attendance of himself and his witness at this court, *as the case may be, or any other terms the judge may think proper to impose*).

Dated this day of , 18 .

....., *Judge.*

Certificate of Clerk who Issued Summons.

I hereby certify that all the costs incurred in this suit up to and inclusive of the date of transfer thereof are as follows:—

Bailiff's fees.—Service		$0 40
	A.R.P.	15
	Mi.	24
	Call.	15
Clerk's fees.—R.C.		15
	Sum.	50
	Copy	20
Witness fees		3 00
Jury fund		03
Total		$

....., *Clerk.*

To the Clerk Division Court
in the County of

274. ORDER FOR THE EXAMINATION OF THE DEFENDANT, AND FOR PRODUCTION OF BOOKS, ETC.

(*Court and Cause.*)

Upon hearing and upon reading the affidavit of , sworn the day of , A.D. 18 , and , it is ordered that the defendant do (upon payment of the proper charges for conduct money) attend before the judge of this court, at his chambers in the Court House, in the of , on the day of , instant, at ten of the clock in the forenoon, or at such time as chambers may thereafter be held, and be examined upon oath, and there and then produce any books, or documents, or copies of or extracts therefrom, pursuant to the 111th section of The Division Courts Act, and particularly the following :—(*here describe them shortly*).

Dated the day of , A.D. 18 .

....., *Judge.*

(*Should the order be for the examination and production before some one else, the above form can easily be changed.*)

---

275. ORDER FOR LEAVE TO DEFEND UNCONDITIONALLY.

(*Court and Cause.*)

Upon hearing and upon reading the affidavit of , sworn the day of , A.D. 18 , and , it is ordered that the defendant be at liberty to defend this action unconditionally, and that the costs of this application be

Dated the day of , A.D. 18 .

....., *Judge.*

---

276. ORDER FOR LEAVE TO DEFEND AS TO PART ON PAYMENT INTO COURT, AND UNCONDITIONALLY AS TO RESIDUE.

(*Court and Cause.*)

Upon hearing and upon reading the affidavit of , sworn the day of , A.D. 18 , and , it is ordered that if the defendant pay into court within days from the date of this order the sum of $ he be at liberty to defend this action as to the whole of the plaintiff's claim in this cause, and it is ordered that if that sum be not so paid the plaintiff be at liberty to have the clerk of this court forthwith enter judgment for that sum, which the said clerk is hereby empowered to do, and the defendant be at liberty to defend this action as to the residue of the plaintiff's claim ; and it is ordered that the costs of this application be

Dated the day of , A.D. 18 .

....., *Judge.*

277. ORDER FOR JUDGMENT UNDER SECTION 111, AND RULE 129.

(*Court and Cause.*)

Upon hearing the solicitors for the plaintiff and defendant, upon reading the affidavits of filed, and it appearing that the defence set up by the defendant applies only to a part of the plaintiff's claim (*or* it appearing that $ of the plaintiff's claim is admitted to be due);

It is ordered at the request of the plaintiff that the plaintiff be at liberty to have the clerk of this court enter, and the clerk is hereby empowered to enter, final judgment in favor of the plaintiff against the defendant for $, part of the amount sought to be recovered in this action, without prejudice to the plaintiff's right to proceed with this action against the defendant for the remainder of the amount claimed.

It is further ordered that the costs of this application be, etc.

Dated the day of , A.D. 18 .

....., *Judge.*

---

278. ORDER FOR LEAVE TO DEFEND ON PAYMENT INTO COURT UNDER SECTION 111.

(*Court and Cause.*)

Upon hearing and upon reading the affidavit of , sworn the day of , A.D. 18 , and , it is ordered that if the defendant pay into court within days from the date of this order the sum of $ he be at liberty to defend this action, but if that sum be not so paid the plaintiff be at liberty to have the clerk of this court, which the clerk is hereby empowered to do, enter final judgment for the amount of the plaintiff's debt or money demand sought to be recovered in this action, as appears by the particulars of claim or demand endorsed on (*or* attached to) the special summons herein, with interest, if any, and costs, and that in either event the costs of this application be .

Dated the day of , A.D. 18 .

....., *Judge.*

---

279. ORDER FOR COMMISSION.

(*Court and Cause.*)

Upon hearing the solicitors for the plaintiff and defendant and upon reading the affidavit of filed,

It is ordered as follows:—

1. A commission may issue directed to of for the examination *viva voce* of witnesses on behalf of the said plaintiff and defendant respectively at aforesaid before the said commissioner.

2. days previously to the sending out of the said commission the said , or his solicitor, shall give to X.... Y...., the solicitor of the said , notice in writing of the mail or other conveyance by which the commission is to be sent out.

3. The costs of this order and of the commission to be issued, and all other matters which may be done in pursuance hereof, shall be costs in the cause.

Dated day of , A.D. 18 .

....., *Judge.*

280. COMMISSION TO TAKE EVIDENCE.

In the Division Court, in the County of

Between A.... B...., *Plaintiff*,
and
C.... D...., *Defendant*.

To E.... F...., of :—

Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents give you power and authority to examine *viva voce* G.... H...., I.... J...., and K.... L...., witnesses on behalf of the said ; and we command you as follows:—

1. Both the said A.... B.... and the said C.... D.... shall be at liberty to examine *viva voce* such witnesses as shall be produced on their behalf, with liberty to either party to cross-examine the said witnesses; the party producing any witness for examination being at liberty to re-examine *viva voce*, and all such *viva voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and that the answers thereto shall be returned with the said commission.

2. Not less than forty-eight hours before the examination of any witness on behalf of either of the said parties, notice in writing, signed by you, and stating the time and place of the intended examination, and the names of the witnesses to be examined, shall be given to the other party by delivering the notice to , at his office in the of (*or* to a grown-up person there).

3. In the event of any witness, on examination, cross-examination, or re-examination, producing any book, document, letter, paper, or writing, and refusing for good cause, to be stated in the deposition, to part with the original thereof, then a copy thereof, or extract therefrom, certified by you to be a true and correct copy or extract, shall be annexed to the witness' deposition.

4. Each witness to be examined shall be examined on oath, affirmation, or otherwise, in accordance with his or her religion.

5. If any one or more of the witnesses do not understand the English language, the questions being previously translated into the language with which he (she *or* them) is (*or* are) conversant, then the examination shall be taken in English through the medium of an interpreter, or interpreters, to be nominated by you, and to be previously sworn according to his or her religion by or before you, truly to interpret the questions to be put to the witnesses, and his, her, or their answers thereto.

6. The depositions to be taken under this commission shall be subscribed by the witness or witnesses and by you. Provided, that if the examining party desires to have such examination taken in shorthand, you may take the same in shorthand, or employ a shorthand writer approved by you, and by you duly sworn, in which case the examination may be taken down by question and answer, and it shall not be necessary for the depositions to be read over or signed by the person examined unless any of the parties so desire, and a copy of the depositions so taken shall be certified by you, or in case the same shall be taken in shorthand by some person employed for the purpose as aforesaid, certified by such shorthand writer as correct, and signed by you.

7. The depositions, together with any documents referred to therein, or certified copies thereof, or extracts therefrom, shall be sent to , clerk of the Division Court in the County of , at , on or before the day of , enclosed in a cover under your seal.

8. Before you in any manner act in the execution hereof you shall take the oath hereon endorsed on the Holy Evangelists, or otherwise in such other

manner as is sanctioned by the form of your religion and is considered by you to be binding on your conscience.

Witness, Esq., Judge of the said court, at , the day of , in the year of our Lord one thousand eight hundred and .

....., *Clerk.* { Seal. }

INSTRUCTIONS AS TO THE EXECUTION OF THE WITHIN COMMISSION.

(*To be endorsed on commission.*)

1. See that the proper notice is given to the parties concerned.
2. Follow all the directions and requirements of the commission strictly.
3. When executed, annex *viva voce* questions, depositions, exhibits, affidavits, and other papers, firmly to the commission, and enclose them all in an envelope. The commissioner should put his seal on the envelope and write his name opposite the seal.
4. Endorse the style of cause on the back of the envelope and the word "Commission," and address it to , and pay the postage on it.
5. The affidavit, affirmation, or declaration of execution, and the oath necessary for the commissioner to take before entering on the execution of the commission, should be made, affirmed, or declared by the commissioner before any commissioner authorized to administer oaths in the Supreme Court of Judicature in England or Ireland, or before a judge of the Supreme Court of Judicature in England; or of the Court of Session or the Justiciary Court in Scotland; or before a judge of any of the County Courts in Great Britain or Ireland, within his county, or before any notary public, certified under his hand and official seal; or before any commissioner authorized to administer oaths in the High Court of Justice for Ontario, or before the mayor or chief magistrate of any city, borough, or town corporate in Great Britain or Ireland, or in any colony of Her Majesty without Canada, or in any foreign country, and certified under the common seal of such city, borough, or town corporate, or before a judge of any Court of Record or of Supreme Jurisdiction in any colony without Canada, belonging to the Crown of Great Britain, or any dependency thereof, or in any foreign country, or, if made in the British possessions in India, before any magistrate or collector certified to have been such under the hand of the governor of such possession, or, if made in Quebec, before a judge or prothonotary of the Superior Court, or clerk of the Circuit Court, or before any consul, vice-consul, or consular agent of Her Majesty, exercising his functions in any foreign place, or before a commissioner authorized by the laws of Ontario to take affidavits in and for any of the Courts of Record of the province for the purpose of and in or concerning any cause, matter, or thing depending or in anywise concerning any of the proceedings to be had in the said courts.

The affidavit of execution of the commission should show the following facts:—

1. The style of the court and cause.
2. The names, residence, and addition of the deponent in full.
3. The taking of the proper oaths by the commissioner.
4. The writing down of the evidence taken, and that it was truly and correctly done.
5. Identifying the *viva voce* questions and evidence taken, and annexed to the commission, as being those administered and taken under the commission.

COMMISSIONER'S OATH.

You shall, according to the best of your skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission within written. *So help you God.*

CLERK'S OATH.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioner named in the commission within written, as far forth as you are directed and employed by the commissioner to take, write down, transcribe, or engross the said questions and depositions. *So help you God.*

WITNESS' OATH.

You are true answer to make to all such questions as shall be asked you, without favor or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. *So help you God.*

INTERPRETER'S OATH.

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations, which shall be administered to, and all and every the questions which shall be exhibited or put to all and every witness and witnesses produced before and examined by the commissioner named in the commission within written, as far forth as you are directed and employed by the said commissioner to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. *So help you God.*

RETURN TO COMMISSION.

The return of the within commission will appear by the depositions, affidavits, and papers annexed.

.....,
(*Signature of Commissioner.*)

---

281. ORDER FOR EXAMINATION OF SICK, AGED, OR INFIRM WITNESSES.

(*Court and Cause.*)

Upon the application of the and upon reading the affidavit of , and upon hearing , it is ordered that , a witness on behalf of , be examined *viva voce*, on oath or affirmation, before

It is further ordered that a copy of this order, with two days' notice of the time and place of the examination, shall be served upon , the solicitor or agent, who may appear and cross-examine the witnesses.

It is further ordered that the evidence shall be taken on oath and shall be reduced to writing and signed by the witness, and shall be transmitted to the clerk of the court, and shall be by him kept on file and may be used upon the trial, saving all just exceptions, without any further proof of the absence of the witness than the affidavit of the , his solicitor or agent, as to his belief.

It is further ordered that the costs of this order and the charge of the examiner, which is hereby fixed at $ per hour, and which is in the first instance to be paid by the , shall be costs in the cause unless otherwise ordered at the trial.

---

282. ORDER APPOINTING GUARDIAN OF INFANT DEFENDANT, WHERE DEFENDANT DOES NOT NAME A GUARDIAN.

Whereas, now at the hearing of this action the defendant, being an infant, appears here in court, and does not name a guardian, E.... F...., of , is hereby appointed to be guardian of the defendant, to act on his behalf in this action.

---

283. ORDER APPOINTING GUARDIAN NAMED BY INFANT DEFENDANT.

Whereas, now at the hearing of this action the defendant, being an infant, appears here in court, and names of to act as his guardian, who now assenting to act as such guardian is hereby appointed to be guardian of the defendant, to act on his behalf in this action.

---

284. ORDER FOR RENEWAL OF SUMMONS.

(*Court and Cause.*)

Upon the application of the plaintiff, upon reading the affidavit of , and it appearing that reasonable efforts have been made to serve the defendant with the summons herein (*or other good reason*);

It is ordered that the service of the writ of summons in this action shall be good if made within twelve months from the date of this order.

Dated day of , 18 .

---

285. ORDER STAYING PROCEEDINGS WITH A VIEW TO APPEAL.

Upon the application of the plaintiff (*or* defendant), I hereby order that proceedings herein be stayed for ten days, from the day of , A.D. 18 , in order to afford the plaintiff (*or* defendant) time to give the security required to enable him to appeal in the cause. (*If the security is to be in a bond less than* $100, *or by payment into court of a less sum than* $50, *add:* And I direct that such security may be by bond in the sum of $, or by paying into court the sum of $.)

Dated this day of , 18 .

.....
Judge.

286. ORDER DISCHARGING MONEYS FROM CLAIM OF PRIMARY CREDITOR.

In the Division Court, in the County of

His Honor Judge , } the day of , 18 .
in Chambers.

Between A.... B...., *Primary Creditor*,
and
C.... D...., *Primary Debtor*,
and
E.... F...., *Garnishee*.

Upon the application of the primary debtor, and upon reading the garnishee summons herein, and the affidavit of

1. It is ordered that all sums due or accruing due by the garnishee to the primary debtor (except the sum of $) be discharged from the claim of the primary creditor under the garnishee summons and proceedings herein.

---

287. ORDER UPON A JUDGMENT SUMMONS ALTERING AN ORIGINAL JUDGMENT OR ORDER UNDER SECTION 245.

(*Insert title of Court and Style of Cause.*)

Whereas the plaintiff obtained a judgment against the defendant in this court on the day of , 18 , for the payment of $ for debt (*or* damages), and $ for costs, and in payment thereof (*or* of $, part payment thereof) the defendant hath made default, and there remains now $ due thereon.

And whereas a summons was, at the instance of the plaintiff, duly issued out of this court, by which the defendant was required to personally appear at this court on the day of , 18 , to be examined on oath according to the provisions and requirements of section 235 of the Act, which summons was proved to this court to have been duly served on the defendant.

It is ordered that the defendant do pay the amount still due on the said judgment, and the costs of the said summons, and incident thereto, as stated at the foot of this order, to the clerk of this court, by instalments as follows, viz.:—

[*Here specify the instalments, the amounts by which and times when they are to be paid*) the first payment to be made on the day of , A.D. 18 .

Given under the seal of the court this day of , A.D. 18 .

GABRIEL GUPPY,
Clerk of the Court.

Amount on judgment..... $
Costs of judgment summons and its hearing.. $
Interest..... $
Total..... $

---

288. CERTIFICATE OF JUDGE'S APPROVAL OF CLERK'S OR BAILIFF'S COVENANT.

I hereby certify that the within covenant is for the sums which I directed, and I hereby approve of and declare such covenant sufficient.

....,
Judge.

289. Order Changing Plan of Distribution.

In the Division Court, in the County of

In the matter of Alfred Jones, an absconding debtor.

Upon the application of George Brown, one of the execution creditors of the said Alfred Jones, and upon hearing the solicitors for John Smith and Sarah Jones, other execution creditors of the said Alfred Jones;

It is ordered that the plan of distribution prepared by the clerk of this court be changed by striking out of the same the portion thereof relating to the claim of the said Sarah Jones, and that the said distribution be proceeded with by the clerk of this court as if no execution had been obtained by the said Sarah Jones.

---

290. Certificate of Clerk of the Peace that Clerk's or Bailiff's Covenant has been Filed.

I hereby certify that the covenant of A.... B...., as clerk (*or* bailiff) of the Division Court for the County of , with C.... D...., of, etc. (*addition*), and E.... F...., of, etc. (*addition*), as his sureties therein, approved and declared sufficient under the hand of the judge of the said county, has this day been duly filed in the office of the Clerk of the Peace in and for the County of .

Dated this day of , A.D. 18 .

.....,
Clerk of the Peace in and for the County of

---

291. Order for Sale of Perishable Goods or Goods which Incur Expense for Food or Keeping.

(*Court and Cause.*)

Upon the application of and upon reading the affidavit of and upon hearing the solicitors for the parties, and it appearing that the horse which is the subject-matter of this action is incurring charge for food and keeping, and that it is proper that the same should be sold at once;

It is ordered that the said horse be forthwith sold by the bailiff of this court by public auction, and that the proceeds thereof shall be paid into court to abide the event of this action.

And it is further ordered that the said sale shall be without prejudice to the rights of the parties in any question which may arise in the action.

And it is further ordered that the costs of this application be costs in the cause.

---

292. Certificate of Clerk of the Peace on Copy of Covenant.

I hereby certify that the within is a true copy of the covenant of A.... B...., clerk (*or* bailiff) of the Division Court for the County of , and C.... D.... and E.... F...., his sureties, together with all copies of affidavits of execution and justification, and endorsements thereon, filed in the office of the Clerk of the Peace for the said County of on the day of , A.D. 18 .

Given under my hand this day of , A.D. 18 .

.....,
Clerk of the Peace in and for the County (or United Counties) of

293. CERTIFICATE OF APPROVAL OF APPEAL BOND BY JUDGE.

Approved of by me this day of , A.D. 18 .

....., *Judge.*

---

294. ORDER TO CONTINUE PROCEEDINGS AGAINST NEW PARTY.

(*Court and Cause.*)

Upon hearing , who alleged (*state circumstances rendering the order necessary*);

It is ordered that the proceedings in this action be carried on between the plaintiffs (*name the continuing plaintiffs*) and the defendants (*name the continuing defendants*), and A.... B...., the person upon whom the interest or liability has devolved.

Dated, etc.

....., *Judge.*

---

295. ORDER STAYING PROCEEDINGS.

(*Court and Cause.*)

Whereas the above actions have been commenced in this court against the said C.... D...., for or in respect of a cause of action arising out of the same breach of contract, or wrong, or breach of duty; and whereas the said C.... D.... has filed an undertaking to be bound as far as his liability to the plaintiffs, A.... B.... and E.... F...., in the said actions is concerned by the court in one of such actions;

It is ordered that all proceedings in the second-mentioned action be stayed until judgment shall have been given in the first-mentioned action.

It is further ordered that the costs of this application and of the order consequent thereon be costs in the first-mentioned action, and abide the event thereof.

And it is further ordered that this order shall be drawn by , and served on the said A.... B.... and E.... F....

....., *Judge.*

---

296. ORDER FOR RECEIVER.

(*Court and Cause.*)

Upon the application of the plaintiff, upon reading the affidavit of , and upon hearing counsel for the plaintiff, no one appearing on behalf of the defendant, although duly notified;

It is ordered that , the above-named plaintiff, be appointed receiver of the share or interest which , the above-named defendant, is entitled to under the will of until the judgment recovered by the plaintiff against the said defendant, together with interest and costs, shall be fully paid.

It is further ordered that the costs of this application be added to the judgment debt.

....., *Judge.*

297. Order for Security for Costs.

(*Court and Cause.*)

Upon the application of the defendant, and it appearing that the plaintiff ordinarily resides at Rochester, in the State of New York;

It is ordered that all proceedings in this action be stayed until the plaintiff shall give security for the costs of the defendant, either by payment into court of the sum of $, or by a bond with one surety for the sum of $, to be approved of by the judge of this court, or by the defendant or his solicitors.

It is further ordered that on the approval of the said bond the same shall be filed with the clerk of this court, and that the stay of proceedings shall thereupon be at an end.

It is further ordered that the bond, when given, or the money, when paid in, shall be subject to the further order of the judge of this court.

And it is further ordered that the costs of this application be costs in the cause; and leave is hereby reserved to the plaintiff, notwithstanding the stay of proceedings, to move for an adjournment of the trial of this action at any sittings of the court when the same shall come on for trial.

....., *Judge.*

---

298. Notice to Creditor of Claim to Goods Taken in Execution.

(*Court and Cause.*)

Take notice that A.... B.... has claimed the goods (*or* certain goods; *where only certain goods are claimed here enumerate them*) taken in execution by me under the warrant of execution issued in this action. If you insist upon my maintaining such seizure you must deposit forthwith with the clerk of this court a sufficient sum of money to indemnify the said clerk and me against our costs of an interpleader.

$ will be a sufficient sum.

Dated, etc.

....., *Bailiff.*

To the above-named plaintiff.

---

299. Notice of Payment into Court in Replevin.

(*Court and Cause.*)

The defendant brings into court the sum of $, damages and the costs to this date, and consents that the replevin bond be delivered up to be cancelled, and waives all right to the property replevied.

Dated, etc.

....., *Defendant.*

(*This should be signed by defendant.*)

300. Notice Disputing Jurisdiction.

(*Court and Cause.*)

You are hereby required to take notice that I dispute the jurisdiction of this court to entertain and try this cause.

Dated this day of , A.D. 18 .

C.... D...., *Defendant ; or,*
E.... F...., *Solicitor* (*or* agent) *for the defendant.*

To A.... B....,
The Plaintiff, and to the Clerk of this Court.

---

301. Notice of Motion for Immediate Judgment.

(*Court and Cause.*)

Take notice that a motion will be made on behalf of me, the above-named plaintiff, before the judge of this court, at his chambers, in the Court House, in the of , in the said County of , on day the day of , A.D. 18 , at o'clock in the noon, or so soon thereafter as the motion can be heard, for an order that I, the plaintiff herein, be at liberty to have final judgment entered in my favor in this cause by the clerk of this court for the amount of the debt or money demand sought to be recovered in this action, together with interest, if any, and costs ; and that in support of such motion will be read the affidavit of me, the plaintiff herein, a true copy of which accompanies this notice.

Dated this day of , A.D. 18 .

Yours, etc.,
A.... B...., *Plaintiff ; or,*
E.... F...., *Solicitor* (*or* agent) *for the above-named plaintiff in this action.*

To C.... D....,
The above-named defendant herein.

[*N.B.—If given to any other person who has authority to receive the notice, address it accordingly ; and if any other affidavit is to be used reference should be made to it and a copy served.*]

---

302. Notice of Application for Approval of Appeal Bond.

(*Court and Cause.*)

Take notice that I will, on the day of , instant, at o'clock in the forenoon (*or as the case may be*), apply to the judge of this court, at his chambers, in , for the approval of the appeal bond herein, in pursuance of the statute in that behalf, and that the names, residences, and additions of the sureties in the said bond are (*here state the same particularly, so that the respondent may find them out*).

Dated this day of , A.D. 18 .

L.... M....,
Plaintiff's (*or* defendant's) *Solicitor or Agent.*

To N.... O....,
Defendant's (*or* plaintiff's) *Solicitor or Agent.*

303. NOTICE OF APPEAL AND THE GROUNDS THEREOF.

(*In the Court of Appeal.*)

In a cause in appeal from the Division Court for the County of , in which A.... B.... is plaintiff, and C.... D.... , defendant.

Take notice that this cause has this day been set down for argument in appeal before a judge of this court for the day of , A.D. 18 , and that such cause, having been appealed, will then be heard, and the grounds of such appeal are as follows :—

1. [*Here, in separate paragraphs, set out clearly and concisely the grounds of appeal relied on.*]

Dated this day of , A.D. 18 .

A.... B....,
Appellant (*or* solicitor for appellant).

To C.... D....,
The Respondent (*or to the* counsel, solicitor, *or* agent, *of the respondent, as the case may be, naming him*).

[*It is difficult to comply strictly with the ambiguous words, "shall forthwith give notice thereof and of the appeal." It has, however, been attempted in the above form. The notice must be served according to section* 150. *During the intervening seven days, the parties can, if not already done, instruct their counsel for the argument of the case, and otherwise prepare for the hearing of the appeal.*]

---

304. NOTICE TO PARTIES WHOSE NAMES ARE ADDED AS DEFENDANTS.

(*Court and Cause.*)

I hereby give you notice that by an order of this court, dated the day of , a copy of which order is hereunto annexed, together with a copy of the summons in the action, you were ordered to be added as one of the defendants in the above action.

And further take notice that the hearing of the above action has been adjourned to the day of , at o'clock in the forenoon, and that if you do not attend at the Court House at upon the day and at the hour above mentioned, either in person or by your solicitor, such order will be made and proceedings taken as the judge may think fit.

....,
Clerk.

---

305. NOTICE TO PRODUCE DOCUMENTS FOR INSPECTION.

(*Court and Cause.*)

Take notice that the plaintiff (*or* defendant) requires you to produce for his inspection, at some place, to be appointed by you, within the division in which this action is pending, the following documents referred to in your particulars of claim (*or* of defence, *or* affidavit) :—

Describe the documents required.

Dated the day of , A.D. 18 .

X.... Y....,
Solicitor for the

To Z....,
Solicitor for

306. NOTICE OF INTENTION TO GIVE COPIES OF LETTERS, TELEGRAMS, AND OTHER WRITTEN INSTRUMENTS IN EVIDENCE.

(*Court and Cause.*)

Take notice that the in this cause intend at the trial hereof to give in evidence the copies of documents hereinafter mentioned as proof of the contents of the original documents of which they purport respectively to be copies, and that the same may be inspected by the solicitor or agents at the office of on day the day of , A.D. 18 , between the hours of 10 a.m. and 4 p.m.

This notice is given under section 46 of The Evidence Act, being chapter 61 of the Revised Statutes of Ontario.

Dated this day of , A.D. 18 .

To the above-named)
and to)
Solicitor.)

Solicitor for the above-named

Description of Copies of Documents.	Date.

307. Notice to Produce.

(*Court and Cause.*)

Take notice that you are hereby required to produce and show to the court on the trial of this action all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly (*specify them*).

Dated the day of , A.D. 18 .

(Signed)

Solicitor for the above named.

To the above-named , and to his solicitor (*or* agent).

---

308. Notice by Defendant to Third Party.

(*Court and Cause.*)

To Mr. X.... Y...., of (*address and description*).

Take notice that this action has been brought by the plaintiff against the defendant as surety for M.... N.... upon a bond conditioned for payment of $ and interest to the plaintiff. The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are his co-surety under the said bond.

(*Or*, as surety for the said M.... N...., in respect of the said matter, under another bond made by you in favor of the said plaintiff dated the day of , A.D. 18 .)

(*Or*, as acceptor of a bill of exchange for $50 dated the day of , A.D. 18 , drawn by you upon and accepted by the defendant, and payable three months after date. The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.)

(*Or*, to recover damages for a breach of a contract for the sale and delivery to the plaintiff of one hundred tons of coal. The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.)

And take notice that if you wish to dispute the plaintiff's claim in this action as against the defendant C.... D...., or your liability to the defendant C.... D. .., you must appear at this court on the return day of the summons in this action, a copy of which summons is hereunto annexed.

In default of your so appearing you will be deemed to admit the validity of any judgment obtained against the defendant C.... D.... in this action, whether obtained by consent or otherwise, and your own liability to contribute or indemnify to the extent herein claimed.

(Signed) C.... D....,
or, L.... M....,
Solicitor for the defendant,
C.... D....

309. Notice to Produce Documents for Inspection.

Take notice that the requires you to produce for his inspection the documents herein mentioned, in which he has an interest, at some place to be appointed by you within the division in which this suit is pending.

Dated the day of , A.D. 18 .

....., *Solicitor for*

Description of Document.	Dates.

310. Notice by Clerk to Defendant of Assignment of Plaintiff's Title to Judgment under Rule 224.

I hereby give you notice that , as executor of the last will and testament of , deceased (*or* as administrator of the estate of , deceased); (*or* as assignee under an assignment dated the day of , A.D. 18), has this day filed an affidavit, together with a notice, a copy of which notice is hereunto annexed, stating that he is desirous of being substituted as a plaintiff in the above action against you in the place of (*or* added as plaintiff with), the above-named plaintiff in the above action against you.

And further take notice that unless you appear at the sittings of this court on the day of , A.D. 18 , at o'clock in the forenoon, and show cause against the same, the said will be substituted for (*or* made a joint plaintiff with) the above-named plaintiff.

....., *Clerk.*

To the above-named defendant.

---

311. Plan of Distribution.

In the Division Court, in the County of

In the matter of Albert Jones, an absconding debtor.

Plan of distribution of the amount levied by the bailiff of the said court of the goods of the said debtor.

To total amount levied by sale of goods		$175 80
By bailiff's fees	$10 20	
By taxed costs of attaching creditor under whose attachment the seizure was made, Smith v. Chapman	7 15	
By costs of execution, Smith v. Chapman ...	65	
		18 00
Total amount for distribution		$157 80

List of attaching creditors entitled to share in moneys levied of the goods of Albert Jones. Interest computed to February 15th, 1895.

No.	Creditor.	Principal.	Costs.	Interest	Total claim.	Pro rata share, 68½c on $.	Remarks.
1.	John Smith.	$110 00	$	$0 52	$110 52	$ 75 70	
2.	George Brown	53 25	3 15	15	56 55	38 73	
3.	Sarah Jones	60 00	3 07	23	63 30	43 37	
					$230 37	$157 80	

Dated at , this 15th day of February, 1895.

X.... Y...., *Clerk.*

312. Notice of Preparation of Plan of Distribution.

In the Division Court, in the County of
In the matter of Albert Jones, an absconding debtor.

Take notice that I have prepared for examination, by the said debtor and his creditors, a list of the creditors entitled to share in the distribution of the moneys levied under the warrants of attachment and the executions issued to satisfy judgments of the attaching creditors, showing the amount due to each for principal, interest, and costs, the total amount to be distributed, and the amount going to each according to such ratable distribution.

And take notice that the said plan of distribution may be examined at my office at any time within five days from the day of the date of this notice, and that unless within ten days after the day of the date of this notice objection to such list has been filed with the said clerk the said list shall be binding upon all parties concerned, unless the judge of this court shall otherwise order.

Dated the day of , A.D. 18 .

To the said Albert Jones, and
To John Smith, George Brown, and Sarah Jones.

---

313. Claim of Damages by Claimant in Interpleader.

Proceed as in form 168, *and add after the word* "prove":—

And take notice that the said Edgar French claims $60 damages from the said Aaron Barr, the above-named plaintiff, and from John Smith, the bailiff of the said court, for or in respect of the seizure of the said property, and that the grounds of the said claim are that the said plaintiff and bailiff broke into and entered his house at , and that they there seized and took away the said goods and chattels under the said execution (*or* judgment).

---

314. Claim of Damages by Creditor.

(*Court and Cause, as in form* 168.)

Take notice that I, the said execution creditor, claim the sum of $ from you, the bailiff of this court, for damages arising out of a certain execution in this action, and that the grounds of my claim are as follows:—

[*Here state the grounds of the claim.*)

That you having seized certain goods and chattels of and belonging to the execution debtor, under process issued from this court at my instance, wrongfully, and without lawful excuse, withdrew from the possession of the said goods and chattels, whereby I was deprived of the fruits of the said execution.

Dated, etc.

....., *Execution Creditor.*

To ....., *The Bailiff of this Court.*

---

315. Plea of Tender.

(*Insert title of Court and Style of Cause.*)

The defendant, for a plea herein to the plaintiff's claim (*or if only to a part of such claim, then specify such part*), says that he always was, and still is, ready and willing to pay to the plaintiff the sum of $, and before action (*or, if the debt was payable on a day certain, naming that day, or some day anterior to it on which the tender was made*) he tendered and offered to pay the same to the plaintiff, and the plaintiff refused to accept it, and the defendant now brings the said sum into court ready to be paid to the plaintiff.

C.... D....

316. Plea of Payment into Court.

The defendant brings into court the sum of $ and costs in full satisfaction.

Dated day of , A.D. 18 .

A.... B....

---

317. Inventory of Goods Seized under Attachment.

An inventory of goods and chattels (property and effects), by me this day seized and taken in the Township of , by virtue of a warrant of attachment issued by T.... L...., clerk of the Division Court of the County of (*or as the case may be*), on behalf of A.... B...., for the sum of $, against the personal estate and effects of C.... D...., that is to say :—One lumber wagon, one plough, etc. (*stating all the articles seized*).

Dated this day of , A.D. 18 .

B.... F....,
Bailiff of the Division Court of the County of .

---

318. Fiat for Counsel Fee.

(*Court and Cause.*)

Tax a counsel fee of $ to the plaintiff (*or* defendant) herein.

Dated this day of , A.D. 18 .

....,
Judge.

To the Clerk.

(*The fiat may be endorsed on the summons, judgment, or order.*)

---

319. Notice of Action.

To A.... B... , Bailiff of the Division Court, in the County of

I hereby give you notice that it is my intention at the end of one calendar month from the service hereof to commence an action against you in the High Court of Justice (*or* in the County Court of the County of , *or* in the Division Court, in the County of) to recover compensation and damages for trespass and excessive levy committed by you and your assistants on the day of , A.D. 18 , by selling and disposing of certain goods and chattels belonging to me in and upon the premises Street, in the City of Toronto, to satisfy the sum of $43 and costs under a judgment recovered against me at the suit of E.... F. .. in the Division Court, in the County of , on the day of , A.D. 18 .

Dated the day of , A.D. 18 .

G.... H....

320. APPEAL BOND WHERE THE PLAINTIFF IS APPELLANT.

Know all men by these presents, that we, A.... B...., of, etc., and E.... F...., of, etc., are jointly and severally held and firmly bound to C.... D...., of, etc., in the penal sum of one hundred dollars of lawful money of Canada to be paid to C.... D...., or his certain attorney, executors, administrators, or assigns; for which payment, well and faithfully to be made, we bind ourselves, and each and every of us in the whole, our and each and every of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of , in the year of our Lord one thousand eight hundred and

Whereas a certain action is now pending in the Division Court for the County of , wherein the above bounden A.... B.... is plaintiff, and the above-named C.... D.... is defendant; and whereas the said action came on to be tried in the said court on the day of last past, when a judgment was given for the said C .... D....

And whereas the said A.... B...., being dissatisfied with such judgment, duly applied for a new trial in the said cause, according to the statutes and rules of court in that behalf, which application the said judge, in due course, refused.

And whereas the said A.... B...., being dissatisfied with the decision of the said judge on such application for a new trial, is desirous of appealing to the Court of Appeal for the Province of Ontario against such decision; and in pursuance of the statutes in that behalf, this bond is given as security to enable the said A.... B. .. so to appeal; and whereas the above bounden E.... F...., at the request of the said A.... B.. ., has agreed to enter into the above written obligation for the purposes aforesaid.

Now, therefore, the condition of this obligation is such, that if the above bounden A.... B.... shall abide by the decision of the said cause by the said Court of Appeal, and pay all sums of money and costs, as well of the said action as of the said appeal, awarded and taxed to the said C.... D...., then this obligation shall be void; otherwise the same shall remain in full force and effect.

Signed, sealed, and delivered in presence of J.... K....

A.... B.... { Seal. }

E.... F.... { Seal. }

---

321. APPEAL BOND WHERE THE DEFENDANT IS APPELLANT.

Know all men by these presents, that we, C.... D...., of, etc., and E.... F...., of, etc., are jointly and severally held and firmly bound to A.... B...., of, etc., in the penal sum of one hundred dollars of lawful money of Canada, to be paid to the said A.... B...., or his certain attorney, executors, administrators, or assigns; for which payment, well and faithfully to be made, we bind ourselves, and each and every of us in the whole, our and each and every of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of , in the year of our Lord one thousand eight hundred and

Whereas a certain action is now pending in the Division Court for the County of , wherein the above-named A.... B.... is plaintiff, and the above bounden C.... D.... is defendant; and whereas the said action came on to be tried in the said court on the day of , last past, when a judgment was given for the said A.... B.... for the sum of $ debt, together with costs of suit (*or as the case may be*).

And whereas the said C.... D...., being dissatisfied with such judgment, duly applied for a new trial in the said cause, according to the statutes and rules of court in that behalf, which application the said judge, in due course, refused.

And whereas the said C.... D...., being dissatisfied with the decision of the said judge on such application for a new trial, is desirous of appealing to the Court of Appeal for the Province of Ontario against such decision; and, in pursuance of the statutes in that behalf, this bond is given as security to enable the said C.... D.... so to appeal; and whereas the above bounden E.... F...., at the request of the said C.... D...., has agreed to enter into the above written obligation for the purposes aforesaid.

Now, therefore, the condition of this obligation is such, that if the above bounden C.... D..... shall abide by the decision of the said cause by the said Court of Appeal, and pay all sums of money and costs, as well of the said action as of the said appeal, awarded and taxed to the said A.... B...., then this obligation shall be void; otherwise the same shall remain in full force and effect.

Signed, sealed, and delivered in presence of J.... K....

C.... D.... (Seal.)

E.... F.... (Seal.)

---

322. APPOINTMENT OF AGENT FOR SERVICE.

(*Court and Cause.*)

Take notice that the above-named has appointed , of Street, in the City of Toronto, in the County of York, solicitor, as his agent, upon whom any notice of appeal and all other papers hereafter requiring service herein may be served for him.

Dated this day of , A.D. 18 .

To the judge of the said court.

---

323. JUDGMENT AGAINST DEFENDANT FOR PAYMENT OF COSTS.

Upon hearing the plaintiff's application at the court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of $ for costs incurred by the plaintiff in preparing for trial before the notice of payment of money into court was received by him and in attending court, such money having been so paid in less than five clear days before the return day of the summons.

And it is ordered that the defendant do pay the same to the clerk of this court on the day of , A.D. 18 .

324. Minute in Procedure Book where Costs Ordered to be Paid under Section 209.

The defendant having disputed the plaintiff's claim, but afterwards, and before the opening of the court, confessed judgment (*or* paid the said claim), but the time of his doing so being too shortly before the sitting of the court for the plaintiff to be notified thereof—and it appearing that without such notice the plaintiff incurred reasonable expenses in procuring witnesses and in attending the court (*or if no witnesses attended omit the foregoing words*, "in procuring witnesses and"), whereby the judge ordered and it is adjudged that the defendant do pay the sum of $ within days (*or* forthwith).

---

325. Judgment against Defendant for Plaintiff's Costs of Proceeding to Trial under Section 154.

Upon hearing the plaintiff's application at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of $ for costs incurred by the plaintiff in preparing for trial (*or* in attending court), the defendant having given notice of defence without intending to defend this action, and not having given the plaintiff notice of his intention not to defend, or withdrawing his defence (*or* having given notice of defence, whereby the plaintiff was obliged to prepare for trial, and subsequently paid the debt and part of plaintiff's costs to the clerk, but not having given notice of his intention to withdraw his defence).

---

326. Judgment where one Judge Acts for Another under Section 22.

This (*as the case may be*) was made (*or* granted) and signed by Judge Z...., acting in the matter for Judge A...., under the provisions of section 22 of The Division Courts Act.

---

327. Where Plaintiff Consents to the Confession being Taken by Instalments, or for Less than Amount Claimed.

(*Style of Court and Cause.*)

I, A.... B...., the plaintiff in this cause, consent that confession be taken for the amount of my claim in this cause (*or* for $, part of my claim in this cause, and I abandon the residue, *or* I allow $ of the defendant's counterclaim (*or* set-off), *or* I allow $ for proper deductions), and claim judgment for the amount confessed, and I am willing that the same be payable by the following instalments, viz.:—(*here state the amounts and times for payment*).

Dated this 20th day of June, 1891.

A.... B....,
Plaintiff.

---

328. Judgment against Defendant on Confession Before Action.

C.... D...., being indebted to A.... B.... in the sum of $ for a debt, and having acknowledged the same in writing (with particulars attached thereto) before G.... L...., clerk (*or* bailiff) of this court, and the same being duly proved and produced to the judge, and the said A.... B.... requesting judgment thereon, it is adjudged that the said A.... B.... do recover against the said C.... D.... the said sum of $ for debt, and $ for costs.

329. Judgment on Confession After Action.

The defendant having been served with summons and particulars of claim for a debt, amounting to $ (*or* the plaintiff having consented to take the defendant's acknowledgment for the sum of $, part thereof, and abandoned the residue; *or* having allowed the defendant's set-off thereout; *or* made certain deductions claimed therefrom), and the defendant having confessed the same in writing before G.... L...., clerk (*or* bailiff), and the confession being duly proved and produced.

(*Conclude as in the preceding form.*)

---

330. Judgment for Debt and Unliquidated Damages.

Judgment for the plaintiff * for $ in respect of the claim for money lent (*or as the case may be*), and for $ in respect of the claim for damages for trespass (*or as the case may be*), together with $ costs, to be paid in days.

(*When an excess has been abandoned, add,* "Being in full discharge of his causes of action set forth in the claim.")

* *Add,* "On verdict by jury," *if such be the fact.*

---

331. Warrant for Discharge of Prisoner.

(*Court and Cause.*)

I hereby certify that C.. . D...., who was committed to your custody by virtue of an order of commitment under the seal of this court, bearing date the day of , 18 , has satisfied the debt (*or* demand) payable and the costs remaining due at the time the order was made, and may in respect of such order be forthwith discharged out of your custody.

....., *Clerk.*

To the Gaoler, County of

---

332. Judgment where Execution Postponed by Consent of Judgment Creditor beyond Fifty Days.

Judgment * for the plaintiff for $ debt, and $ for costs, to be paid as follows:—(*Here state the time when or the instalments by which the judgment is to be satisfied*) the plaintiff (*or the party entitled to the same*) having consented to this postponement.

(*When an excess has been abandoned or the defendant has paid money into court, which has not been accepted, add,* "Being in full discharge of his cause of action set forth in the claim.")

* *Add,* "On verdict of jury," *if the cause was tried by the jury.*

---

333. Request of Creditor for Discharge of Prisoner.

(*Title of Court and Style of Cause.*)

I, the undersigned A.... B...., the plaintiff (*or* the beneficial plaintiff) in this action, request that the defendant, if still in custody, may be discharged (*or*, if not in custody, that he be not arrested).

A.... B....

To the clerk (*or* bailiff) of the said court.

334. Form of Warrant of Commitment for Disobedience of Order, or for Neglect or Refusal Referred to in Section 240.

(*Title of Court and Style of Cause.*)

Whereas, upon the application of the plaintiff, a summons was duly issued from and out of this court, which was duly served upon the defendant, requiring him to appear at , in the said county, on the day of , A.D. 18 , to answer such things as were therein named and to be examined upon oath, touching his estate and effects and the manner and circumstances under which he contracted the debt (*or* incurred the damages *or* liability) which formed the subject of this action, and as to the means and expectations he then had, and as to the property and means he still has of discharging the debt (*or* damage *or* liability), and as to the disposal he has made of his property.

And whereas the said defendant did not attend as required by the said summons, or allege a sufficient reason for not attending (*or* attended and refused to be sworn, *or* to declare any of the things for which he was summoned; *or* would not take answer touching the subjects upon which he was summoned (*or* make answer respecting the same to the satisfaction of the judge); *or* because it appeared to the judge that the defendant obtained credit from the plaintiff (*or* incurred the debt or liability) under false pretences, *or* by means of fraud or breach of trust; *or* had made, or caused to be made, any gift, delivery, or transfer of his property (*or* had removed or concealed the same with intent to defraud his creditors, or any of them); *or* it appeared to the satisfaction of the judge that the defendant, when summoned, had, or since the judgment was recovered against him in this cause has had, sufficient means to pay the debt (*or* damages or costs) recovered against him, either altogether, or by the instalments by which the same was ordered to be paid, *or* he has refused or neglected to pay the same at the time or times ordered).

And whereas by an order bearing date the day of , A.D. 18 , it was ordered that the defendant should be committed to the common gaol of the County of , for contempt of this court, for the term of days.

(*Conclude as in forms* 162, 162*a*.)

---

335. Execution on a Judgment in Favor of a Third Party, where, in Garnishee Proceedings, the Third Party Claimed the Amount of the Debt Sought to be Attached, and the Claim was Decided in Favor of the Third Party with Costs.

(*Title of Court and Style of Cause.*)

Whereas the primary creditor at a sitting of this court on the day of , A.D. 18 , obtained a judgment against the primary debtor for debt (*or* money demand), over which the court had jurisdiction, due and owing from the primary debtor to the primary creditor, and the sum of $ for a debt was claimed due and owing by the garnishee to the primary debtor, and the primary creditor took proceedings to attach the same to satisfy his claim against the primary debtor (*or* to the extent of $, part thereof, *or as the*

case may be), but the said H.... G...., the other party to the said proceedings, claimed and was adjudged to be entitled thereto by assignment thereof (*or otherwise as the case may be; here state how*), and the judge gave effect to the said last-mentioned claim, and ordered the garnishee to pay the said debt so sought to be attached into court for the said H.... G.... forthwith (*or as the case may be; or* ordered the same to be paid by the following instalments, viz.:—*here state the instalments*), and because the garnishee set up a defence to the said claim which he knew, or ought to have known, was untenable, the judge ordered the sum of $, being part of the costs of the said H.... G.... and so wrongfully occasioned by the said garnishee, to be paid by the garnishee, and ordered the sum of $, the residue of the costs of the said H.... G.... on being obliged to prove his claim and right to the said money, to be paid by the primary creditor, and none of the said moneys being paid, but remaining wholly unsatisfied (*or* the sum of $ remaining unsatisfied);

You are hereby required to levy of the goods and chattels of the said garnishee (not exempt from execution) the sum of $ for debt due the primary debtor (and $ for part of the said costs, if costs were ordered against the garnishee), and to levy of the goods and chattels of the said primary creditor, in the said county (not exempt from execution), the sum of $ for the said costs of the said H.... G.... in so proving his said right (*or* for the residue of the costs of the said H.... G.... in so establishing his right to the said debt, *or* the sum of $ for the costs of the said H.... G.... in establishing his right to the said debt), so due and owing to the primary debtor by the garnishee, together with your lawful fees.

(*Proceed as in form* 132, *and conclude.*)

---

336. NOTICE OF APPLICATION FOR AN INTERLOCUTORY ORDER IN THE NATURE OF AN INJUNCTION.

(*Title of Court and Style of Cause.*)

Take notice that I, Aaron Whitesell, intend to apply at the sitting of the said Division Court (*or* to His Honor Judge , at his chambers in the City of Toronto) on , the day of , 18 , at o'clock in the noon, for an order in the nature of an injunction to restrain you from selling or working or letting to hire or using the horse which was bargained and agreed to be sold and delivered by you to me, and for breach of which this action is brought.

Or from harboring John Smith, my apprentice, and employing him in and about the work and labor of your farm (*or* shop), for which harboring and wages received by him this action is brought.

Or from cruelly using, abusing, and overworking, and not properly feeding and taking care of, a horse which I have let to hire to you for two months, and for injury to my reversion in which this action is brought (*or as the case may be*).

Dated this day of , A.D. 18 .

To Jobson Buckle, Yours, etc.,

of , AARON WHITESELL,
the Defendant or Respondent. *Plaintiff.*

337. INTERLOCUTORY INJUNCTION.

(*Title of Court and Style of Cause.*)

The plaintiff, having undertaken to abide by any order this court may make as to damages, in case this court shall hereafter be of opinion that the defendant shall have sustained any by reason of this order, which the plaintiff ought to pay;

Now, therefore, Jobson Buckle, the defendant in this cause, his servants, agents, and workmen, are hereby strictly enjoined and restrained from selling or working or letting to hire the horse which was bargained and agreed to be delivered by the defendant to the plaintiff, and for breach of which this action is brought.

Or from harboring Jacob Smith, the apprentice of the plaintiff, and employing him on and about the work and labor of the farm (*or* shop) of the defendant, for which harboring and for wages earned by him this action is brought.

Or from cruelly using, abusing, and overworking, and not properly feeding and taking care of, a horse which plaintiff had let to hire to the defendant for two months, and for injury and damages to the plaintiff's reversion in which this action is brought, until the day after the day upon which this said cause shall be heard or until further order (*or* until the day of , A.D. 18), upon which day the court will consider whether the order shall be further continued.

Dated this day of , A.D. 18 .

J.... S....,
Judge.

If you, the said defendant (your servants, agents, or workmen), act in disobedience to this order, you, the said defendant, will be liable to be committed by this court, and be also liable to have your estate sequestered.

---

338. NOTICE TO BE ENDORSED.

To the defendant:

Take notice that unless you obey the directions contained in this order, obedience thereto will be enforced by attachment.

Dated this day of , A.D. 18 .

J.... K....,
Clerk.

---

339. ORDER FOR COMMITTAL FOR BREACH OF AN ORDER IN THE NATURE OF AN INJUNCTION, OR FOR NEGLECT TO OBEY AN ORDER.

(*Title of Court and Style of Cause.*)

{ Seal. }

Whereas, by an order of this court, dated the day of , A.D. 18 (*here recite the order*).

Now, upon the motion of the plaintiff, and upon hearing the defendant (*or* if the defendant does not appear, reading the affidavit of X.... Y....) (*or* where service has been by bailiff of I.... M...., a bailiff of this court, *or* the Division Court of holden at , showing *or* being satisfied

on oath that a copy of the said order and notice of this application have been severally served upon the defendant, C.... D....), and upon reading the affidavit of, etc. (*enter evidence*), the court being of the opinion, upon consideration of the facts disclosed by the said affidavit (*or* affidavits), that the defendant, C.... D...., has been guilty of a contempt of this court by a breach of the said order (*or* by neglecting to obey the said order) doth order that the said defendant, C.... D...., do stand committed to (*here insert prison used by the court*) for his said contempt.

It is further ordered that any application for his release from custody shall be made to the judge.

Given under the seal of the court, etc.

E.... F....,
Clerk, etc.

---

340. Warrant of Attachment.

(*Title of Court and Style of Cause.*)

Seal.

To Ready Fastner, Bailiff of the said court, and to all constables and other peace officers of the said county, and to the gaoler of the common gaol of the same county at .

Whereas, by an order bearing date the day of , A.D. 18 , it was ordered that the defendant, C.... D...., should stand committed to prison for contempt of this court;

These are therefore to require you, the said bailiff, constable, or peace officers, or any or either of you , to arrest and apprehend the defendant C.... D...., and him safely convey and deliver to the said gaoler at , and you, the said gaoler, to receive and keep the defendant C.... D.... in your custody in the said gaol until the further order of this court.

Given under the seal of the court, etc.

E.... F....,
Clerk of the Court.

---

341. Notice of Application for Discharge from Custody.

(*Title of Court and Style of Cause.*)

Take notice that I intend, on the day of , 18 , to apply to this court (*or* to the judge of this court) at the sittings of the said court to be held at (*or* at the judge's chambers at), in the said County of , at the hour of o'clock in the noon, or so soon thereafter as the application can be heard, to discharge me from custody, I being desirous of clearing my contempt.

Dated this day of , A.D. 189 .

C.... D....
Defendant.

To A.... B....,
Plaintiff.

342. Order of Discharge from Custody.

(*Title of Court and Style of Cause.*)

Seal.

Upon application made this day of by for the defendant, who was committed to prison for contempt, by order of this court, dated the day of , 18 , and upon reading the affidavit of the defendant, filed the day of , 18 , showing that he is desirous of clearing his contempt, and upon hearing the plaintiff (*or* if no one appears for the plaintiff, then upon being satisfied that notice of this application has been duly served upon the plaintiff), it is ordered that the said defendant remaining in your custody for the said cause and no other, he be discharged from such custody as to the said contempt, but not as to the costs of the said contempt.

Given under the seal of the court this day of , 18 .

E.... F....,
Clerk of the Court.

To the Gaoler of the common gaol of the said county at .

---

343. Affidavit for Certiorari.

In the High Court of Justice, Division.

In the matter of a plaint in the Division Court, in the County of Wentworth, wherein is plaintiff, and is defendant.

I, A.... B ..., of the of , in the County of , in the Province of Ontario, make oath and say:—

1. That on the day of , last past, I was served with a summons and particulars of claim thereto attached (*or* indorsed), in a suit entered in the Division Court for the (said) County of , in which suit is plaintiff, and A.... B.... is defendant.

2. That the annexed papers, marked respectively "A" and "B," are true copies (*or* the copies) of the said summons and particulars of claim so served on me.

3. That I am the said A.... B.. . mentioned and described as the defendant in the said suit in the said Division Court, and in the said summons so served on me as aforesaid.

4. That this action is brought against me for the purpose of recovering the sum of $ for (*here set out particularly the cause of action sued for, if the particulars of claim attached to or indorsed on the summons do not do so*).

5. That I am advised, and verily believe, that several difficult questions of law are likely to arise on the hearing of the said cause, and, among others, the following:—(*Here state, distinctly and fully, the questions of law likely to arise; also state in the affidavit all facts tending to show that such questions are likely to arise*).

6. That I have been advised, and verily believe, that I have a good defence to the said action so brought against me on the merits.

7. That the application for an order of *certiorari* to be made herein is not made for the purpose of delaying the fair or speedy trial of the said action, or in any way to prejudice or delay the said in the prosecution of any cause of action he may have against me in any suit, nor in the recovery of any sum of money he may be found entitled to in the said suit; that the said application will be made *bona fide*, and for the sole purpose of the better determining my liability on the said alleged cause of action, and with no other object or purpose whatsoever.

Sworn, etc.

344. Affidavit for Certiorari by Plaintiff.

In the High Court of Justice, Division.
In the matter of a plaint in the Division Court, in the County of , wherein is plaintiff, and is defendant.
I, , of the City of , in the County of , make oath and say :—

1. I am the above-named plaintiff.

2. This action was commenced by me on the day of , 18 , and the particulars of my claim therein, as annexed to the summons issued out of the said court, are as follows :—

3. The defendant duly filed a notice disputing my said claim.

4. The action came on for trial on the day of , 18 , before the judge of the said court, and during the course of the trial the defendant, by his counsel, asserted that the devise under which I claimed the lands and premises in respect of the trespass to which by the defendant this action was brought was invalid, and that the defendant, as heir-at-law of A.... B...., the testator, was entitled to the lands and premises in question herein. The learned judge of said court thereupon decided that he had no jurisdiction to proceed with the trial of the said action, and the same was adjourned to enable me to move to transfer the same into this court, pursuant to the statute in that behalf.

Sworn before me at the of in the County of , this day of , A.D. 18 .
A Commissioner, etc.

This affidavit is filed on behalf of the said A.... B....

---

345. Affidavit for Prohibition.

In the High Court of Justice, Division.
In the matter of a plaint in the Division Court, in the County of , wherein is plaintiff, and is defendant.
I, A.... B...., of the of , in the County of , and Province of Ontario, make oath and say :—

1. That, on the day of , A.D. 18 , I was served with the annexed copy of summons and particulars of demand thereto attached, marked "A."

2. That I am the defendant (*or* one of the defendants) in the suit mentioned in the said summons of against myself (*if others, naming them also*), in the Division Court for the (said) County of .

3. That I attended at the sittings of the said Division Court, held on the day of , A.D. 18 , and did there and then (through C.... D...., my counsel or agent, *as the case may be*) object to the jurisdiction of the said Division Court to entertain the said suit, inasmuch as I claimed to justify the said alleged trespass by right and title to the said close at the time when the said trespass was alleged to have been committed (*or here set out any other ground of objection which the deponent made, according to the circumstances of the case*).

4. That I did there and then offer to prove, before the judge of the said court, that I did *bona fide* claim the right and title to the said close, and that the same was my close, soil, and freehold (*or whatever other fact or facts were relied on before the judge as showing a want of jurisdiction, or what the defendant otherwise offered to prove*).

5. That the said close in which the said supposed trespass was committed is part of lot No. , in the concession of the Township of , in the County of .

6. That I did, at the time when the said supposed trespass was committed, *bona fide* claim, and from thence continually hereto have *bona fide* claimed, the soil or freehold of the said land by virtue of a conveyance (*or as the case may be*) thereof heretofore made to me by one G.... H...., bearing date the day of , A.D. 18 (*or in such other way as the defendant claims title to the land*).

7. That the said close is part and parcel of the said land so conveyed (*or as the case may be*) as aforesaid, and that the said , the plaintiff in said Division Court suit, claims the said close adversely to me, and contends, as I believe, that the said close belongs to him, but which I say is not the case.

8. That the said judge, notwithstanding my first objection, and notwithstanding my said offer to prove my said title as aforesaid, did proceed to hear and determine the said cause, and gave judgment against me for $ damages, together with costs (*or as the case may be*), on the said day of , A.D. 18 , payable in days (*or* forthwith, *or* otherwise, *as the case may be*).

9. That I have not paid the said damages or costs.

10. That execution has (*or* has not) issued against me therefor.

Sworn, etc.

---

346. Affidavit on Motion for Mandamus.

(*Proceed as in form* 346, *to the end of paragraph* 2.)

3. The said action came on for trial on the day of , A.D. 18 , and during the course of the said trial the defendant by his counsel objected to the jurisdiction of the said court upon the ground that the cause of action did not arise within the limits of the said Division Court, and that the defendant did not reside or carry on business therein.

4. It was shown in evidence on the said trial, and the fact is, that the goods for the price of which this action is brought were ordered by the defendant of the plaintiff by a telegram sent by the defendant from the City of Hamilton, in the County of Wentworth, to the plaintiff, at Severn River, in the District of Algoma, as follows :—

"Send one ton most white fish, if good, dressed, at 5c. Ans."; to which the plaintiff replied :—

"Fish are shipped to-day in eight boxes."

5. It was further shown in evidence that the fish arrived at Hamilton, but the defendant contends that the same were in such a state as to be of no value, and refused to pay therefor.

6. The learned judge acceded to the objection of the defendant, and refused to further proceed with the trial of the said action in the said court.

7. I declined to move for an order for the transfer of the said action to the Division Court within the limits of which the defendant resides.

8. The learned judge thereupon ordered me to pay the costs of the said action.

Sworn, etc.

This affidavit is filed on behalf of the said A.... B.....

347. NOTICE OF MOTION FOR MANDAMUS, CERTIORARI, OR PROHIBITION.

(*Court and Cause as in* 363.)

Take notice that a motion will be made on behalf of A.... B...., the above-named plaintiff (*or* C.... D...., the above-named defendant), before the presiding Judge in Chambers at Osgoode Hall, in the City of Toronto, on Monday (*or* Friday), the day of , A.D. 18 , at the hour of ten o'clock in the forenoon, or so soon thereafter as the motion can be heard, for an order that a writ of mandamus do issue out of this court directed to E.... F...., judge of the County Court of the County of , *ex officio* the judge of the Division Court in the County of , commanding him to hear and determine the plaint now pending in the said court between the said A.... B.... and C.... D.....

(*Or* for an order that the judge of the County Court of the County of , *ex officio* the judge of the Division Court, in the County of , do forthwith send to the registrar of the Division of the High Court of Justice at Toronto the proceedings and papers in a certain action in the said Division Court between the said A.... B...., plaintiff, and C.... D...., defendant, with all things touching the same that the said court may further cause to be done thereupon what it shall see fit to be done, and for an order staying all further proceedings in the said Division Court until further order of the said High Court or a judge.)

(*Or* for an order that the said A.... B.... be prohibited from further proceeding with the said plaint in the Division Court in the County of , wherein the said A.... B.... is plaintiff and the said C....D.... is defendant, *or* for such further or other order as to the said judge may seem meet.)

And take notice that in support of such application will be read the certified copy of the entries in the procedure book of the said Division Court, duly certified by the clerk thereof, pursuant to The Division Courts Act, the affidavit of this day filed and the exhibits therein referred to.

Dated the day of , A.D. 18 .

X.... Y....,
Solicitor for the said

To the Judge of the said court,
and
To
and
To the above-named A.... B.... or C.... D.....

348. Order for Certiorari.

In the High Court of Justice, Division.

The Hon. Mr. Justice in Chambers } , the day of , 18 .

In the matter of a plaint in the Division Court, in the County of , wherein A.... B.... is plaintiff, and C.... D.... is defendant.

Upon the application of the above-named , and upon reading the affidavit of , and a certified copy of the entries in the procedure book in the said Division Court, duly certified by the clerk thereof, pursuant to The Division Courts Act, and upon hearing counsel for the said A.... B.... and C.... D.... ;

It is ordered that the judge of the County Court of the County of , *ex-officio* judge of the Division Court, in the County of , do forthwith send to the registrar of the Division of the High Court of Justice at Toronto the proceedings and papers in a certain action in the said Division Court between A.... B...., plaintiff, and C.... D..., defendant, with all things touching the same, together with this order, that this court may further order to be done thereupon what it shall see fit to be done, and no further proceedings are to be taken in the said court, in said action, until further order of this court or a judge.

---

349. Order for Prohibition.

(*Court and Cause as in* 348.)

Upon the application of the above-named C.... D...., and upon reading, etc., and it appearing that the said A.... B.... has entered an action against the said C.... D.... in the Division Court, in the County of , and the said court has no jurisdiction to hear and determine the said action by reason that (*state facts showing want of jurisdiction*) ;

It is ordered that the said A. .. B.... be and he is hereby prohibited from further proceeding in the said action in the said court.

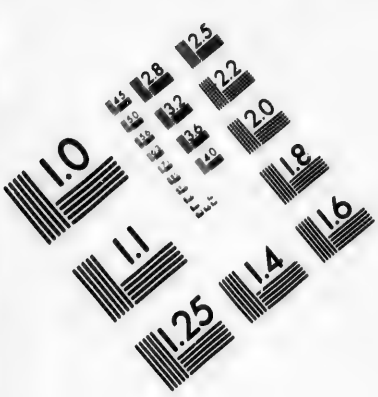
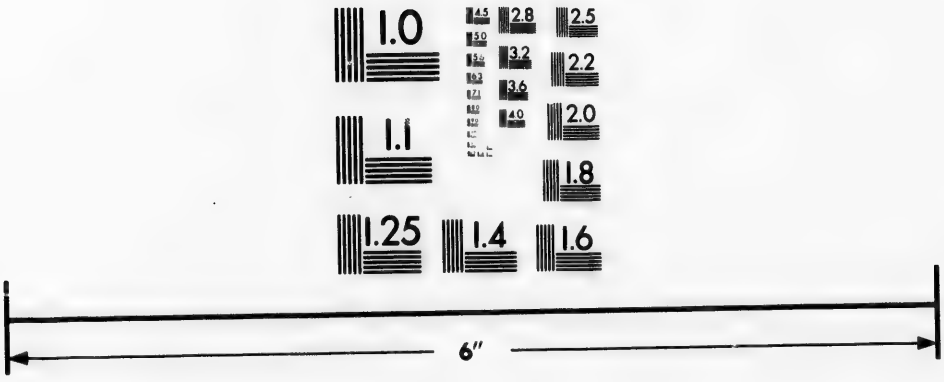
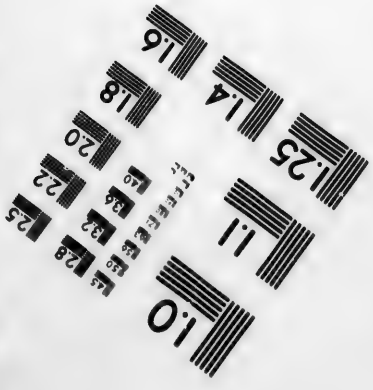
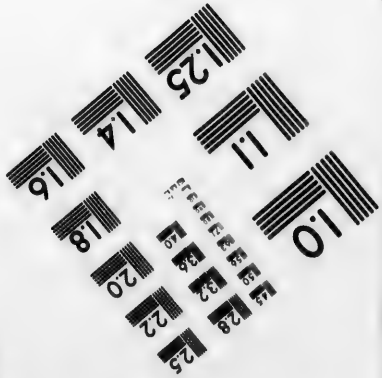




IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

2.8
2.5
3.2
2.2
3.6
2.0
1.8
1.1
1.0

BOUNDARIES OF DIVISION COURTS.

DIVISION COURTS AND THE LIMITS OF THE RESPECTIVE DIVISIONS IN THE PROVINCE OF ONTARIO ON 31ST DECEMBER, 1893.

DISTRICT OF ALGOMA.

1. Bounded west by Thunder Bay District, 85th parallel of west longitude, and east by Barr River, including all the islands in front.

2. Bounded west by Barr River, and east by the westerly boundary of the Townships of Thessalon River, Kirkwood, Bridgeland, and Houghton, and by said boundary line of the last three named townships, produced northerly.

3. Bounded west by the westerly boundary of the Townships of Thessalon River, Kirkwood, Bridgeland, and Houghton, and the boundary line of the last named three townships, produced northerly, and on the east by the eastern boundary of the Township of Sprague, produced northerly.

4. Bounded on the west by the boundary line between the Townships of Sprague and Lewis, produced north to the northern boundary of the District of Algoma, thence along the northern boundary of the said district, thence south along said eastern boundary to the waters of Lake Huron, thence westerly along the southern boundary of the District of Algoma to a point opposite the boundary line between the Townships of Sprague and Long, thence northerly to said last-mentioned boundary line, thence easterly along the said southern boundary line of the Township of Sprague to the place of beginning.

5. Consisting of St. Joseph's Island.

COUNTY OF BRANT.

1. The City of Brantford and that part of the Township of Brantford not included in the other divisions hereinafter described. The Townships of Onondaga and Tuscarora, and that part of the Township of Brantford lying south of the main road from Brantford to Hamilton and east of Fairchild's Creek.

2. The Town of Paris and that part of South Dumfries west of the line between lots 18 and 19, and that part of the 1st concession of the Township of Brantford lying west of a continuation of the last-mentioned line.

3. The remainder of the Township of South Dumfries and of the 1st concession of the Township of Brantford.

4. The ten northern concessions of the Township of Burford, and that part of the 2nd, 3rd, 4th, and 5th concessions of the Township of Brantford west of the line between lots Nos. 10 and 11, and that portion of the Kerr Tract west of a continuation of the last-mentioned line.

5. The Township of Oakland, the four southern concessions of the Township of Burford and lots Nos. 1 to 5, inclusive, in the ranges east and west of the Mount Pleasant Road, in the Township of Brantford, adjoining the Township of Oakland.

County of Bruce.

1. The Town of Walkerton and Township of Carrick, and all the Township of Brant south of the line between the 11th and 12th concessions.

2. The Village of Teeswater, all the Township of Culross, and that part of the Township of Greenock lying south of the line between the 11th and 12th concessions, and Village of Lucknow, and all of Kinloss Township not in No. 9.

3. The Town of Kincardine, and that part of the Township of Kincardine lying south of a line drawn between the 9th and 10th concessions.

4. The Village of Paisley, and that part of the Township of Brant lying north of a line drawn between the 11th and 12th concessions of the Township of Brant.

All the Township of Elderslie, except lots 16 to 36, both inclusive, in concessions 12, 13, and 14 of said township.

All the Township of Greenock lying north of a line drawn between concessions 11 and 12 of said township.

Lots 26 to 35, both inclusive, in the 8th, 9th, 10th, 11th, 12th, 13th, and 14th concessions of the Township of Bruce; and that part of the Township of Saugeen lying east of a line between lots 28 and 29, and south of the production of the town line between the Townships of Arran and Elderslie to the Saugeen River.

5. All Saugeen Township not included in No. 4, all that part of the Township of Arran lying west of a line between lots 10 and 11 and north of Arran Lake and the outlet of said lake, and that part of the Township of Amabel lying south of the 10th concession of Amabel, and the Villages of Port Elgin and Southampton.

6. The Village of Tiverton, and that portion of Kincardine Township north of a line drawn between concessions 9 and 19 in said township, and all the Township of Bruce, except that part included in No. 4.

7. That part of the Township of Elderslie not included in No. 4, and that part of Arran Township not included in No. 5, and the Village of Tara.

8. The Village of Wiarton, the Township of Albemarle, and that part of the Township of Amabel lying north of a line between the 9th and 10th concessions.

9. All the Township of Huron, and that part of the Township of Kinloss, described as follows:—

Commencing at the boundary line between said Townships of Huron and Kinloss, at a point at which the blind line between the 12th concession of said Township of Kinloss and the third range south of the Durham Road, in the said Township of Kinloss, commences; thence in an easterly direction along said blind line to the westerly side of the Goderich Gravel Road, or the 10th side line of said Township of Kinloss; thence along said 10th side line in a southerly direction to the boundary line of the County of Huron; thence

in a westerly direction along said last-mentioned boundary to the said line between Huron and Kinloss aforesaid; thence northerly along said last-named boundary line to the place of beginning.

10. All the Townships of Eastnor, Lindsay, and St. Edmunds.

COUNTY OF CARLETON.

1. All the City of Ottawa, and the Township of Gloucester, to lot 15, inclusive, Rideau front and concessions 1 to 6, inclusive, Ottawa front and the islands in the Ottawa River opposite thereto.

2. All the Township of Goulburn; the 8th, 9th, and 10th concessions of the Township of Marlborough; all that portion of the Township of Nepean south of the River Goodwood; and the 4th, 5th, and 6th concessions thereof north of the same river to the boundary line between lots 20 and 21 in the last-mentioned concessions.

3. All the Township of Huntley, and all the Township of March, except lots 1 to 5, inclusive, in concessions 1, 2, 3, and 4 thereof.

4. All the Townships of Fitzroy and Torbolton.

5. All the Township of North Gower; Long Island in the Rideau River, and the 1st, 2rd, 3rd, 4th, 5th, 6th, and 7th concessions of the Township of Marlborough.

6. All the Township of Osgoode; the 6th, 7th, and 8th concessions Ottawa front, and from lots 16 to 30, inclusive, of the Rideau front of the Township of Gloucester.

7. All the Township of Nepean, except the City of Ottawa, and the part of the said township lying south of the River Goodwood, and concessions 4, 5, and 6 north of said River Goodwood to the boundary line between lots 20 and 21 in said last-mentioned concessions, and including also lots 1 to 5, inclusive, in concessions 1, 2, 3, and 4 in the Township of March.

COUNTY OF DUFFERIN.

1. The Town of Orangeville, the Township of East Garafraxa, and all that portion of the Township of Amaranth lying south of the southerly boundary of lot No. 26, in each concession of the Township of Amaranth.

2. The Village of Shelburne, the Township of Melancthon, and all that portion of the Township of Amaranth lying north of the southerly boundary of lot No. 26, in each concession of the Township of Amaranth.

3. The Township of Mulmur.

4. The Township of Mono.

5. The Township of East Luther.

COUNTY OF ELGIN.

1. The Townships of Bayham, Malahide, and South Dorchester.

2. The Townships of Southwold and Yarmouth (except the City of St. Thomas).

3. The City of St. Thomas.

4. The Townships of Aldborough and Dunwich.

County of Essex.

1. Town of Sandwich and Township of Sandwich West.

2. Town of Amherstburgh and Townships of Alden and Anderdon.

3. The Village of Kingsville, and all that part of the Township of Gosfield not included in Division No. 8.

4. The Township of Colchester South, and all that part of Colchester North, south of the 9th concession, exclusive of the said concession and the lots on both sides of Malden Street.

5. Township of Mersea and Village of Leamington.

6. The Township of Rochester, the Village of Belle River, the first concession of the Township of Maidstone, and all north of the Middle Road in said Township of Maidstone.

7. Town of Windsor, the Town of Walkerville, and all that part of Sandwich East, north of the Talbot Street range.

8. The Town of Essex, all that part of the Township of Maidstone lying west of the first concession and south of the Middle Road; so much of Sandwich East as is south of Talbot Street, including the lots on both sides of said street to Nos. 306 and 307; all of Colchester north of the 9th concession, including said concession and lots on both sides of Malden Street; and all that part of Gosfield lying north of concession 6, and extending as far east from the limits between Gosfield and Colchester as lot No. 12, including such lot in each concession north of concession 6, inclusive.

9. The Township of Tilbury West.

County of Frontenac.

1. City of Kingston, Township of Garden Island, Wolf Island, Howe Island, and part of the Township of Pittsburg.

2. Cataraqui, comprising the Township of Kingston and the Village of Portsmouth.

3. Loughboro', comprising the Townships of Loughboro' and Bedford.

4. Verona, comprising the Townships of Portland and Hinchinbrooke.

5. Sunbury, comprising the Township of Storrington and part of the Township of Pittsburg.

6. Comprising the Townships of Kennebec, Olden, Oso, Barrie, Clarendon, Palmerston, Miller, North Canonto, and South Canonto.

County of Grey.

1. The Town of Owen Sound, the Village of Brook, and the Townships of Derby, Keppel, Sarawak, and Sydenham.

2. The Town of Durham, the Township of Egremont, and those portions of the Townships of Bentinck, Normanby, and Glenelg, as follows:—That part of the Township of Bentinck lying east of the line between lots 30 and 31 in the 1st, 2nd, and 3rd concessions south of the Durham Road, and in con-

cessions 1, 2, and 3 north of the Durham Road, and east of the line between lots 15 and 16 in concessions 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 thereof. That part of the Township of Normanby lying east of the line between lots 20 and 21, in the 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, and 18th concessions, and all of the Township of Glenelg, excepting that portion lying east of the line between lots 10 and 11 in the 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, and 15th concessions thereof.

3. The Town of Meaford, the Township of St. Vincent, and that part of the Township of Euphrasia lying west of the line between the 6th and 7th concessions and north of the line between lots 15 and 16.

4. The Township of Collingwood and the east half of the Township of Euphrasia, excepting that part thereof lying west of the line between the 4th and 5th concessions, and south of the lots between lots 12 and 13, and east half of the Township of Osprey.

5. The Township of Proton, the west half of the Township of Osprey, and those parts of the Township of Artemesia, consisting of the ranges of lots lying parallel to the Toronto and Sydenham Road, and south of the line between lots 130 and 131, and concessions 1, 2, and 3 south of the Durham Road, and 1, 2, 3, 4, 5, and 6 north of the said Durham Road, and those portions of concessions 7, 8, and 9 lying east of the ranges of lots parallel with the Toronto and Sydenham Road, and those portions of concessions 10, 11, 12, 13, and 14 lying east of the line between lots 30 and 31.

6. The Township of Sullivan and the Township of Holland, excepting those portions of concessions 9, 10, 11, and 12 lying south of the line between lots 15 and 16, and those portions of concessions 7 and 8 west of the ranges of lots lying parallel with the Toronto and Sydenham Road, and the ranges of lots lying parallel with the Toronto and Sydenham Road, and south of the line between lots 50 and 51.

7. All the lots from 1 to 30, inclusive, in the three concessions south and the three concessions north of the Durham Road, in the said Township of Bentinck; and all the lots from 1 to 15, inclusive, in the 12th concession, from the 4th to the 15th concessions, inclusive, of the said Township of Bentinck; and all the lots from 1 to 20, inclusive, in all the concessions from 4 to 18, inclusive, in the Township of Normanby aforesaid.

8. All the lots from 51 to 130, inclusive, in all the concessions parallel to (and being northeast and southwest of) the Toronto and Sydenham Road, in the Townships of Artemesia, Glenelg, and Holland aforesaid; all lots to the westward of the dividing line between lots 30 and 31, in all the concessions from 10 to 14, inclusive, and all the lots from 1 to 5 in the 7th, 8th, and 9th concessions, inclusive, which lie to the southwest of the 3rd concession, southwest of the said Toronto and Sydenham Road, in the said Township of Artemesia; all the lots from 1 to 12, inclusive, in concessions 5 and 6, and the lots from 1 to 15, inclusive, in the concessions from 7 to 12, inclusive, in the Township of Euphrasia; all lots south of the allowance for road between lots 15 and 16 in the 9th, 10th, 11th, and 12th concessions, and from lots 25 to 30, inclusive, in the 7th concession, and lots 28, 29, and 30, in the 8th concession of the said Township of Holland; and all the lots lying east of the allowance for road between lots 10 and 11, in all the concessions from 7 to 15, inclusive, in the said Township of Glenelg.

County of Haldimand.

1. All the Township of Seneca, except the 1st and 2nd concessions, the Young Tract, and the property of the late Richard Martin, and the late Robt. Weir; all the Township of Oneida, except the first range north of the Cayuga line; the Dennis Tract, and the lots southerly of said tract.

2. The whole of the Township of North Cayuga, except that portion thereof lying northeast of side line between lots 12 and 13; the 1st and 2nd concessions of the Township of Seneca, excepting that portion thereof lying northeast of the side line between lots 12 and 13; the Young Tract, and the lands of the late Robert Weir and the late Richard Martin, Esquires; the first range of Oneida and north of Cayuga line; also the Dennis Tract and river lots lying south.

3. The Townships of Moulton, Sherbrooke, and Dunn, including the Village of Dunnville.

4. The Townships of South Cayuga and Rainham.

5. The Township of Canboro, and those portions of North Cayuga and Seneca not included in the other divisions.

6. The Township of Walpole.

County of Haliburton.

1. The Township of Glamorgan and Snowden, except that portion of both included in the 3rd division, and all of the Townships of Snowden, Lutterworth, Minden, Anson, Stanhope, Hindon, Sherbourne, and McClintock.

2. The Townships of Dysart, Guilford, Havelock, Livingstone, Lawrence, Eyre, Harburn, Dudley, Harcourt, Bruton, Clyde, and Nightingale, and that portion of Monmouth not included in the 3rd division.

3. The Township of Cardiff, the Township of Monmouth (except lots 1 to 19 inclusive) in the 13th, 14th, 15th, 16th, and 17th concessions; the south twelve concessions of the Township of Glamorgan, and from lot 21, inclusive, to the eastern boundary in the south six concessions of Snowden.

County of Halton.

1. All the territory comprised in the new survey of the Township of Trafalgar, and the first ten lots in concessions 1, 2, 3, 4, 5, and 6 in the Township of Esquesing, and the first five lots in concessions 7, 8, 9, 10, and 11 in said township.

2. That part of the Township of Trafalgar known as the Old Survey.

3. All the rest of the territory comprised in concessions 8, 9, 10, and 11 in the Township of Esquesing not comprised in the 1st division.

4. All the rest of the territory comprised in concessions 1, 2, 3, 4, 5, and 6 in the Township of Esquesing.

5. The Township of Nassagaweya.

6. The Township of Nelson.

County of Hastings.

1. The City of Belleville and the Township of Thurlow.

2. All that part of the Township of Sidney which lies east of the line between lots Nos. 6 and 7 in the several concessions and south of the 9th concession.

3. The Township of Tyendinaga, except that part called Deseronto.

4. The Township of Hungerford.

5. All that part of the Township of Sidney which lies to the north of the 8th concession, and to the east of lot No. 6 in each concession north of the 8th concession, and all that part of the Township of Rawdon which lies to the south of the 9th concession, and that part of the Township of Huntingdon south of the 6th concession.

6. The Townships of Madoc, Tudor, Limerick, excepting that part lying north of the 10th concession, and also that part lying west of lot 25 in the different concessions south of the 11th concession of said township, and including all that part of the Township of Huntingdon north of the 6th concession of said township, the Townships of Elzevir, Grimsthorpe, Cashel, excepting that part of Cashel lying north of the 10th concession of the said township.

7. The Village of Deseronto.

9. The Town of Trenton, and all that part of the Township of Sidney which lies to the west of lot No. 7 in each of the concessions of the said township, including Mill Island.

10. The Townships of Marmora, Lake, and all that part of the Township of Rawdon which lies to the north of the 8th concession.

12. The Townships of Wollaston, Faraday, Herschel, McClure, Wicklow, Bangor, Carlow, Monteagle, Dungannon, Mayo, and all that part of the Township of Cashel lying north of the 10th concession of said township, and all those parts of the Township of Limerick lying north of the 10th concession and west of lot No. 25 in the several concessions of the said Township of Limerick.

County of Huron.

1. That part of the Township of Goderich to the north of the Cut Line and the Huron Road until the same meets the road allowance between the 13th and 14th concessions; then back along the Huron Road to its junction with the Cut Line; then west by the road allowance between concessions 11 and 12 to the River Maitland; then along the River Maitland to Goderich, together with the Township of Colborne.

2. The Township of McKillop, the Town of Seaforth, and all that portion of the Township of Tuckersmith not included in the 3rd division, south of the blind line between the 7th and 8th concessions of the said Township of Hullett.

3. The Township of Hullett; that part of the Township of Goderich not included in Nos. 1 and 7; 1st, 2nd, 3rd, and 4th concessions, Township of Stanley; 1st and 2nd concessions Township of Tuckersmith, L.R.S., north of lot 15, and that portion west of side road between lots 25 and 26, H.R.S., and Town of Clinton.

4. The Township of Grey ; all of the Township of Morris east of side road between lots Nos. 10 and 11 (which is not included in No. 12), and the Village of Brussels.

5. The Townships of Usborne and Stephen, and the Village of Exeter.

6. The Townships of Ashfield and West Wawanosh, except that portion east of Maitland River.

7. The Township of Goderich south of Cut Line and Huron Road until the same joins the road between the 12th and 14th concessions of the Township of Goderich ; thence along the said concessions until the same joins the River Bayfield ; all Stanley not included in No. 3, and the Village of Bayfield.

8. The Village of Wingham, the Township of Turnberry ; all that part of East Wawanosh not included in No. 12, and all the Township of Morris not included in Nos. 4 and 12.

9. The Township of Howick and the Village of Wroxeter.

10. The Township of Hay.

11. The Township of Stephen.

12. Commencing at the northeast angle of the Township of Hullett ; thence southerly along the easterly boundary of the said Township of Hullett to the blind line between the 7th and 8th concessions of said township ; thence westerly along said line to the western boundary of the township ; thence northerly along the westerly boundary of the township to the Maitland River at the southeastern corner of the Maitland Block ; thence along the said river northerly till the western boundary of East Wawanosh is reached ; thence northerly along said westerly boundary to the road running between the 6th and 7th concessions of said Township of East Wawanosh ; thence easterly along said road to the easterly limit of said township ; thence northerly along the gravel road to the road running between the 5th and 6th concessions of the Township of Morris ; thence easterly along the said road to the line between lots 10 and 11 ; thence southerly along said line between the 6th and 7th concessions ; thence easterly along said line to the line between lots 15 and 16 ; thence southerly to the boundary line between the Townships of Morris and Hullett ; thence easterly to the place of beginning, including the Village of Blyth.

County of Kent.

1. The Town of Chatham and that part of the Townships of Dover East and West to the south of the 12th and 13th concession line of the Township of Dover East ; and that part of the Township of Chatham south of the 12th and 13th concession line, and west of the side road between lots 12 and 13, from the first mentioned 12th and 13th concession line to the 5th and 6th concession line, and all south of the said 5th and 6th concession line of said township ; that part of the Township of Harwich north of 5th and 6th concession line by the eastern boundary ; that part of the Township of Raleigh north of the 16th concession to the west side road between lots 12 and 13 north to the 6th and 7th concession line, and all of the said township north of the said last-mentioned line, and that part of the Township of Tilbury East north of the 4th concession.

2. That part of the Township of Howard south of the 2nd and 3rd concession line by the eastern boundary (known as the Botany Road), and that part of the Township of Orford south of the 10th and 11th concession line of said township.

3. All that part of the Gore of Camden lying west of the 10th and 11th concession line, and that part of the Township of Camden lying west of the side line between lots 6 and 1 ; the Village of Dresden, and that part of the Township of Chatham north of the 5th and 6th concession line and east of the side road between lots 12 and 13.

4. That part of the Township of Harwich south of the 5th concession of the eastern boundary, and south of the 3rd concession by the western boundary, and that part of Raleigh south of the 15th concession and east of the side road between lots 12 and 13 and the road to the lake shore through lot 146 on the Talbot Road.

5. The Village of Wallaceburg, the Gore of Chatham, and that part of the Township of Chatham northwest of the 12th and 13th concession line and west of the said road between lots 12 and 13, and that part of Dover East lying north of the 12th and 13th concession side road.

6. That part of the Township of Howard north of the Botany Road aforesaid, and that part of the Township of Orford north of the 10th and 11th concession line, the Township of Zone, the Town of Bothwell, the Village of Thamesville, and that part of the Gore of Camden east of the 10th and 11th concession line, and that part of the Township of Camden east of the side line between lots 6 and 7.

7. That part of Tilbury East south of the 3rd concession, the Township of Romney, and that part of the Township of Raleigh south of the 6th and 7th concession line and west of the side road between lots 12 and 13 in the said township, and the road through lot 147 on Talbot Road.

County of Lambton.

1. The Township of Sarnia and the Town of Sarnia.

2. The Township of Warwick, including that portion of the Village of Arkona south of the township line.

3. The Townships of Euphemia and Dawn.

4. The Township of Sombra.

5. The Township of Plympton.

6. The Township of Bosanquet, including that portion of the Village of Arkona north of the township line.

7. The Township of Moore.

8. The Township of Enniskillen.

9. The Township of Brock.

County of Lanark.

1. The Townships of Drummond, Bathurst, South Sherbrooke, Burgess North, and that part of the Township of Elmsley North, north of the Rideau River, within the County of Lanark and west of lot No. 12 in each concession.

2. The Townships of Lanark, Dalhousie, Darling, Lavant, and North Sherbrooke.

3. The Township of Beckwith, and the first six lots in the first seven concessions of the Township of Ramsay.

4. The Township of Montague, and that part of the Township of North Elmsley from lot No. 1 to lot No. 12 in each concession, both inclusive.

5. The Township of Pakenham.

6. The Township of Ramsay, with the exception of the first six lots on the first seven concessions of the said township.

United Counties of Leeds and Grenville.

1. The 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th concessions and broken front of the Township of Elizabethtown, and the concession roads between them.

2. The 1st, 2nd, 3rd, 4th, and 5th concessions, and broken front, and that part of the 6th, 7th, and 8th concessions from the town line of Edwardsburgh to lot No. 18, inclusive of the Township of Augusta, and the concession roads between them.

3. The 1st, 2nd, 3rd, 4th, and 5th concessions and broken front of the Townships of Leeds and Lansdowne, respectively, and the concession roads between them.

4. The Township of South Gower, the Township of Oxford, from the west side line of lot No. 11 in all the concessions of the eastern boundary of the township, and the gore of land between South Gower, Oxford, and Edwardsburgh.

5. The Township of Wolford (except the 7th and 8th concessions and the allowance of road between them), lots Nos. 1 to 10, inclusive, in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th concessions of the Township of Oxford, and the allowance of roads within and between them.

6. The Townships of Bastard and Burgess, and those parts of the Townships of Leeds and Lansdowne on the north side of the rear of the 5th concession in each respectively.

7. The Townships of Kitley and Elmsley.

8. The Townships of North Crosby and South Crosby.

9. That part of the Townships of Escott and Yonge, in rear of the 4th concession of Yonge, and in the rear of the 6th concession of Escott; that part of the Township of Elizabethtown, in rear of the 7th concession, and west of lot No. 18 in the 8th, 9th, 10th, and 11th concessions, and the allowances for roads embraced therein.

10. The Township of Edwardsburgh.

11. That part of the Township of Augusta in rear of 5th concession and west of lot No. 18, in the 6th, 7th, and 8th concessions; the whole of the 9th and 10 concessions of the Township of Augusta; the Gore between the Townships of Oxford, Wolford, and Augusta; that part of the Township of Elizabethtown in rear of the 7th concession, and east of the commons, between lots Nos. 18 and 19 in the 8th, 9th, and 10th concessions; the 7th and 8th concessions of the Township of Wolford; lots Nos. 1 to 10, inclusive, in the 9th and 10th concessions of the Township of Oxford, and the allowances for roads embraced therein.

12. The 1st, 2nd, 3rd, and 4th concessions and broken front of the Township of Yonge; the 1st, 2nd, 3rd, 4th, 5th, and 6th concessions and broken front of the Township of Escott, and the allowances for roads embraced therein.

The said 1st, 2nd, 3rd, and 12th divisions, respectively, embrace and comprehend within their limits those portions of the River St. Lawrence, and islands therein, within the exterior side lines of which such portions of said river and islands would lie and be, if such exterior side lines were produced and extended in that direction to the utmost limits of the province.

Counties of Lennox and Addington.

1. The Town of Napanee; Township of Richmond; all that part of North Fredericksburgh and Adolphustown lying north of Hay Bay; and all that part of North Fredericksburg lying north of Big Creek.

2. Comprises 1st concession of Ernestown, the Village of Bath, the Township of Amherst Island, and the 2nd, 3rd, and 4th concessions of the said Township of Ernestown, from the west limits thereof to the west limit of lot No. 21 in each concession.

3. Township of South Fredericksburg and all that part of North Fredericksburg and Adolphustown not included in division No. 1.

4. 1st, 2nd, and 3rd concessions of the Township of Camden and the Village of Newburg.

5. All that part of the Township of Camden not included in division No. 4.

6. All that portion of the Township of Ernestown not included in the limits of division No. 2.

7. Townships of Sheffield, Kaladar, Anglesea, Abinger, Effingham, Ashby, and Denbigh.

County of Lincoln.

1. The Town and Township of Niagara.

2. The Township of Grantham (including the City of St. Catharines, the Villages of Merritton and Port Dalhousie) and the Township of Louth.

3. The Townships of Caistor and Gainsborough, and the 9th concession of the Township of Grimsby, including the 1st and 2nd ranges as part of the said concession.

4. The Villages of Grimsby and Beamsville; the Township of Clinton and the Township of Grimsby, except the 9th concession and 1st and 2nd included as part of the said 9th concession.

District of Manitoulin.

1. The Town of Gore Bay, the Townships of Gordon, Allan, Campbell Mills, Burpee, Robinson, Dawson, the islands known as Cockburn, Barrie, Clapperton, and the Duck Islands, and that part of the Township of Billings lying west of the road allowance between lots 15 and 16 in the several concessions thereof, and so much of the Township of Carnarvon as lies west of Lake Mindemoya and north of the line between the 6th and 7th concessions thereof.

2. The Town of Little Current, the Township of Howland, and those parts of the Townships of Sheguiandah and Bidwell lying north of the line between the 6th and 7th concessions of Sheguiandah, and 4th and 5th concessions of the Township of Bidwell, and the 6th and 7th concessions of the line between lots 17 and 18 in the Township of Billings and the adjacent islands lying north and east of the said townships, except the Clapperton Island.

3. Manitowaning, the Townships of Assiginack, Tehkummah, and Sandfield, and those parts of the Township of Sheguiandah lying south of the line between the 6th and 7th concessions of Sheguiandah, and 4th and 5th concessions of the Township of Bidwell, and the 6th and 7th concessions of the Township of Billings to the line between lots 17 and 18 of said township, and the Township of Carnarvon, except so much of the same as lies west of Mindemoya Lake, and all that part of Manitoulin lying east of the Township of Assiginack, Manitowaning, and South Bays, and the islands adjacent thereto.

County of Middlesex.

1. That part of the City of London lying to the west of Maitland Street, with that portion of the Township of London lying south of the line between the 4th and 5th concessions and west of the said street, produced northerly or a line in the same direction to the line between the said 4th and 5th concessions, and with that portion of the Township of Westminster lying west of the main road leading south from Clarke's Bridge across the Thames; south to the line between the 1st and 2nd concessions; and westerly to the line between lots 42 and 43, and extending northerly to the River Thames; and also including the Village of London West.

2. The Villages of Parkhill and Ailsa Craig, the Townships of East Williams and West Williams, and that portion of the Township of Lobo lying north of the line between the 11th and 12th concessions; and east of the line between lots Nos. 12 and 13.

3. The Townships of McGillivray and Biddulph, and the Village of Lucan.

4. The Township of Delaware, with that portion of the Township of Westminster west of the line between lots 30 and 31, in the 2nd concession; then southerly on the line between lots 20 and 21, to the southerly limit of the township, including all west of said line, and also including all that portion of the front of said Township of Westminster lying west of the line between lots Nos. 42 and 43 not included in the 1st division; with that portion of the Township of Caradoc lying south of the line between the 5th and 6th concessions to the River Thames; and with that portion of the Township of Lobo lying south of the line between the 6th and 7th concessions to the River Thames.

5. The Townsh'ps of Ekfrid and Mosa, including the Villages of Wardsville, Newbury, a t Glencoe.

6. Townships of Adelaide and Metcalfe; the Town of Strathroy, with that portion of the Township of Caradoc lying north of the line betwen the 3rd and 4th concessions; with that portion of the Township of Lobo which lies north of the 6th concession, and west of the line between lots 12 and 13 of the said township.

7. The Township of North Dorchester north and south of the Rive Thames; that portion of the Township of West Nissouri which lies south o the line between lots 14 and 15; and with that portion of the Township o Westminster lying south of the line between the 1st and 2nd concessions, and

east of the line between lots 30 and 31 in the 2nd concession, and thence east of the line between lots 20 and 21, continued south to the southerly limit of the said Township of Westminster.

8. All that portion of the Township of London which lies north of the line between the 4th and 5th concessions; that portion of the Township of Lobo which lies north of the line between the 6th and 7th concessions, and east of the line between lots 12 and 13, to the line between the 11th and 12th concessions, and with all that portion of the Township of West Nissouri which lies north of the line between lots Nos. 14 and 15.

9. That part of the City of London lying east of Maitland Street; that part of the Township of London lying south of the line between the 4th and 5th concessions and east of the said street, produced northerly or in a line in the same direction to the line between the said 4th and 5th concessions; and that part of the Township of Westminster lying north of the line between the 1st and 2nd concessions, and east of the main road leading south from Clarke's Bridge, across the Thames.

District of Muskoka.

1. The Village of Bracebridge, and the Townships of Macaulay, McLean, Ridout, Monck, and Cardwell, concessions 1, 2, 3, 4, 5, 6, 7, 8, and 9 in the Townships of Stephenson, Bruce, and Franklin, and that part of the Township of Watt situated east of lot 21 in the several concessions thereof; and concessions thereof; and concessions 7, 8, 9, 10, 11, 12, and 13 in the Townships of Muskoka and Draper.

2. The Village of Gravenhurst; the Townships of Morrison, Ryder, and Oakley, and concessions 1, 2, 3, 4, 5, and 6 of the Townships of Muskoka and Draper.

3. The Village of Huntsville; the Townships of Stisted, Chaffey, and Sinclair; and concessions 10, 11, 12, 13, and 14 in the Townships of Stevenson, Brunel, and Franklin.

4. The Townships of Wood, Medora, and Humphrey, and that part of the Township of Watt situated west of lot 21 in the several concessions thereof.

District of Nipissing.

1. The Townships of Springer, Field, Badgerow, Caldwell, Kirkpatrick, Hugel, Rattler, Dunnet, Hagar, and Appleby, and all that part of the District of Nipissing which is situated west of the line between the Indian Reserve and the Township of Widdifield, produced north and south, to the boundary of the said district and the east of the eastern boundary of the fourth division.

2. The Townships of Mattawan, Olrig, Calvin, Papineau, Lauder, Pentland, Boyd, Osler, McLaughlin, Canisby, Sabine, Lyell, Airy, Murchison, and Robinson, and all that part of the District of Nipissing situated east of the line between the Townships of Bonfield and Calven, produced south to the provisional County of Haliburton, and east of the line between the Townships of Phelps and Olrig, produced north to the Ottawa River.

3. The Townships of Widdifield, Merrick, Mulock, Phelps, Ferris, Chisholm, Ballantyne, Wilkes, Biggar, Paxton, Butt, Devine, Hunter, McCraney, Finlayson, Peck, and all that part of the District of Nipissing situated west of the line between the Townships of Phelps and Olrig, produced north to the Ottawa River and east of the eastern boundary of 1st division.

4. The Townships of McKim, Neelon, Dryden, Awrey, Hawley, Blezard, and all that part of the District of Nipissing which is situated west of the line between the said Township of Awrey and the Township of Hagar, produced north and south to the boundary of the said district.

5. The Townships of Bonfield and Boulter.

County of Norfolk.

1. The Gore of the Township of Woodhouse, and all that part of said township lying west of the side line between lots 5 and 6, together with that part of the 4th, 5th, and 6th concessions lying west of the side line between lots 12 and 13, including that part of the Town of Simcoe within the same.

2. The Township of Townsend.

3. The Township of Windham.

4. The Township of Middleton.

5. The Township of Charlotteville.

6. The Township of Walsingham.

7. The Township of Houghton.

8. All that part of the Township of Woodhouse not included in division No. 1. viz. : All that part of the 1st, 2nd, and 3rd concessions lying east of the side line between lots 5 and 6, and that part of the 4th, 5th, and 6th concessions lying east of the said line between lots Nos. 12 and 13 in said township.

United Counties of Northumberland and Durham.

1. Townships of Cartwright and Darlington, and the Town of Bowmanville.

2. Township of Clarke and Village of Newcastle.

3. Township of Hope and Town of Port Hope.

4. Townships of Cavan, Manvers, South Monaghan, and Village of Millbrook.

5. Township of Hamilton and Town of Cobourg.

6. Townships of Haldimand and Alnwick.

7. Township of Cramahe and Village of Colborne.

8. Township of Brighton and Village of Brighton.

9. Township of Percy and Village of Hastings.

10. Township of Murray.

11. Township of Seymour and Village of Campbellford.

COUNTY OF ONTARIO.

1. Including the Townships of Whitby and East Whitby, and the Towns of Whitby and Oshawa.

2. The Township of Pickering.

3. The Townships of Reach and Scugog, and the Village of Port Perry.

4. The Townships of Uxbridge and Scott, and the Town of Uxbridge.

5. The Township of Brock and the Village of Cannington.

6. The Township of Thorah, and all that part of the Township of Mara lying south of the line between the 4th and 5th concessions.

7. All that part of the Township of Mara lying north of the line between the 4th and 5th concessions thereof, and the Township of Rama.

COUNTY OF OXFORD.

1. The Town of Woodstock, the Townships of Blandford, East Zorra, East Oxford, and that part of the Township of North Oxford situated east of lot 16, and that part of West Oxford lying east of lot No. 7, to the Stage Road, thence on the north side of the Stage Road to where the said road intersects the Township of East Oxford.

2. The Township of Blenheim.

3. The Townships of West Zorra and East Nissouri.

4. The Townships of North Norwich and South Norwich and the Village of Norwich.

5. All those portions of the Townships of North Oxford and West Oxford not comprised in the 1st division; the Town of Ingersoll, and those portions of the 1st and 2nd concessions of the Township of Dereham west of the Middle Town line.

6. The Town of Tilsonburg, and all that portion of the Township of Dereham not included in the 5th division.

DISTRICT OF PARRY SOUND.

1. The Town of Parry Sound, and the Townships of Foley, McDougall, Cowper, and Carling, and all that portion of the district lying to the west of the east boundary of Carling, produced to the French River.

2. The Townships of McKellar, Croft, Hagerman, Ferguson, and all that portion of the district lying between the east boundary of Ferris and the west boundary of Ferguson, produced to the French River.

3. Township of Humphrey, Christie, Monteith, and Conger.

4. Townships of McMurrich, Perry, and Armour.

5. The Townships of Spence, Chapman, Ryerson, Lount, Proudfoot, Bethune, and Sinclair.

6. That territory bounded on the west by the western boundaries of the Townships of Pringle and Patterson, and the western boundary of the Town-

ship of Patterson, produced to French River and Lake Nipissing; on the east by the eastern boundary of the District of Parry Sound, and on the south by the southern boundaries of the Townships of Himsworth, Gurd, and Pringle.

7. The Townships of Machar, Laurier, Strong, and Joly.

County of Peel.

1. Town of Brampton, Township of Chinguacousy, and northern division of the Township of Toronto Gore.

2. Village of Streetsville, Township of Toronto, and southern division of the Township of Toronto Gore.

3. Township of Caledon.

4. Village of Bolton, Township of Albion.

County of Perth.

1. All that part of the Township of North Easthope west of the line between lots 25 and 26, and south of the road between the 8th and 9th concessions, and all that part of the Township of South Easthope west of the side line between lots 25 and 26; all that part of the Township of Downie and Gore north and east of the concession line between the 10th and 11th concessions and the Oxford Road; and all the Township of Ellice from the 1st to the 13th concessions, inclusive.

2. All that part of the Township of Fullarton not included in division No. 3, and the Townships of Hibbert and Logan.

3. That portion of the Township of Downie west of the Oxford Road and south of the concession line between the 10th and 11th concessions; the Township of Blanshard; all that part of the Township of Fullarton comprising the 13th and 14th concessions and south of a road leading from the Mitchell Road, between lots 24 and 25, east to lot 3 in the 10th concession; thence east along the line between the 10th and 11th concessions to the Town Line.

4. That part of the Township of North Easthope east of the line between lots 25 and 26 and north of the 8th concession, inclusive, with the 9th and 10th concessions; all that part of the Township of South Easthope not included in division No. 1.

5. The Township of Mornington, and all that part of the Township of Elma from lots Nos. 53 to 72, both numbers inclusive of the 1st concession, and from lots Nos. 27 to 36, both numbers inclusive, in and from the 2nd to the 18th concessions, both concessions inclusive, of the said Township of Elma; and concessions 14, 15, and 16 of the Township of Ellice; and concessions 11, 1 3, and 14 of the Township of North Easthope.

6. The Township of Wallace, and all that part of the Township of Elma from the 1st concession to the 18th concession, both concessions inclusive, and comprising lots Nos. 1 to 52, both inclusive, of the 1st concession, and lots Nos. 1 to 26, inclusive, from the 2nd to the 18th concessions, both concessions inclusive.

COUNTY OF PETERBOROUGH.

1. The Town of Peterborough, the Village of Ashburnham, the Townships of North Monaghan and Ennismore, and all that part of the Township of Harvey lying west of Pigeon Lake and south of Bobcaygeon; and all the Township of Smith lying south of the 7th concession; and all the Township of Otonabee lying west of the 8th concession and north of lot 21 from the said 8th concession to the western boundary of said Township of Otonabee; and all the Township of Douro lying south of lot No. 11; and all that part of the Township of Dummer lying south of lot No. 11 and west of the 5th concession.

2. The Townships of Asphodel, Belmont, and Methuen, and that part of the Township of Dummer lying east of the 4th concession and south of lot No. 11.

3. All that part of the Township of Otonabee lying east of the 9th concession; and all that part of said Township of Otonabee lying south of lot No. 22 and west of the 8th concession.

4. All that part of that Township of Smith lying north of the 6th concession; and all that part of the Township of Douro lying north of lot No. 10; and all that part of the Township of Dummer lying north of lot No. 10; and also the Village of Lakefield and of the Township of Galway; and all the Township of Harvey except that portion lying west of Pigeon Lake, and south of Bobcaygeon.

5. The Townships of Burleigh, Cavendish, Anstruther, and Chandos.

UNITED COUNTIES OF PRESCOTT AND RUSSELL.

1. The whole of the Township of Longueuil, the municipality of the Village of L'Orignal, and the first concession of the Township of Caledonia.

2. All that part of the Township of West Hawkesbury, extending from the front of the 3rd concession to the rear of the said township.

3. The whole of the Township of East Hawkesbury.

4. The Township of North Plantagenet, and that part of the Township of South Plantagenet lying north of the Nation River.

5. The whole of the Township of Cumberland.

6. The whole of the Township of Russell.

7. The two front concessions of the Township of West Hawkesbury, and the municipality of Hawkesbury Village, within the same.

8. The Township of Caledonia (excepting the 1st concession of the said township), and also that portion of the Township of South Plantagenet lying south and east of the Nation River.

9. The whole of the Township of Alfred.

10. The whole of the Township of Clarence.

11. The whole of the Township of Cambridge.

County of Prince Edward.

1. The Town of Picton, the 2nd and 3rd concessions "Military Tract" from the west line of lot No. 13, eastward; Gore "G"; 1st and 2nd concessions north of the Carrying Place; 1st concession southeast of the Carrying Place, and 2nd concession north of Black River, including Gore "K" and "L" and McCan Gores, all in the Township of Hallowell; Block "I," the concessions north and east of East Lake, and Gore "B," in the Township of Athol, and the 1st and 2nd concessions south of the Bay of Quinte, and Gore "A," in the Township of North Marysburg, and 1st concession southwest of Green Point, to the end of Carman's Point in Sophiasburg.

2. The Township of South Marysburg and the southern part of Athol, commencing at the outlet of East Lake, thence down to the head of the lake, thence down to the base line between the 1st concession south and the 1st concession north of East Lake, till it strikes the Township line of Hallowell, thence down said township line till it strikes South Marysburg.

3. The Township of Sophiasburg, together with Big Island, excepting the 1st concession southwest of Green Point to the end of Carman's Point.

4. All that part of the Township of Ameliasburg lying east of the line between lots Nos. 86 and 87 in the 1st, 2nd, 3rd, and 4th concessions of said township, including Huff's Island.

5. That part of the Township of Hillier not included in the 7th division, also the 1st and 2nd concessions north of West Lake and west of lot No. 7 in the said concession, and that part of Irwin Gore lying north of and west of lot No. 7 in the 2nd concession, and the west part of the 2nd concession produced west of lot No. 74, in that concession, in the Township of Hallowell.

6. Block (IV.) four, concession south side of West Lake, 1st concession "Military Tract," 2nd and 3rd concessions of said tract west of lot No. 13 in those concessions, Gore "E," 1st and 2nd concessions north of West Lake and east of lot No. 6 in those concessions; the Gerrow Gore and that part of Irwin Gore not included in division No. 5, and all that part of the 3rd concession produced east of lot No. 75 in the Township of Hallowell.

7. All that part of the Township of Ameliasburg lying west of the line between lots Nos. 86 and 87 in the 1st, 2nd, 3rd, and 4th concessions of said township; all that part of the 4th and 5th concessions of the Township of Hillier west of the line between lots Nos. 86 and 87, and the 3rd concession west of the line between lots Nos. 22 and 23, with that part of the 2nd concession lying north of Pleasant Bay, in the said Township of Hillier.

8. All the point lying east of the west line of Marsland's Gore, the concession north of Smith's Bay and Waupoos Island in the Township of North Marysburg.

District of Rainy River.

1. That part of the district composed of the territory to the north of the southeasterly shore of the Lake of the Woods, and a line drawn in a northeasterly direction from Rat Portage to the north end of Lake Manitou; thence in an easterly direction to the south end of the lake known as the lake where the river bends; thence in an easterly direction to a point where the said meridian of the most easterly part of Hunter's Island intersects the Canadian Pacific Railway at the southwest angle of Hawke Lake.

2. The territory lying south and east of the Lake of the Woods, and of the said line.

County of Renfrew.

1. The Town of Pembroke, the Townships of Pembroke, Stafford, Alice, Petewawa, Buchanan, Rolph, Wylie, McKay, Fraser, Head, Clara, and Maria, and all that part of the Township of Wilberforce from the 18th to the 25th concessions, both inclusive; and also all those parts of the 14th, 15th, 16th, and 17th concessions of the same Township of Wilberforce lying north of Snake River and east of Lake Dore.

2. All that part of the Township of Westmeath lying east and north of the Muskrat Lake and River, and all those parts of the Township of Ross from the 5th to the 9th concessions, both inclusive, east of Muskrat Lake, and from the 7th to the 13th (of the other) concessions of Ross, both inclusive, of the said Township of Ross.

3. The Village of Renfrew, and the Townships of Horton and Admaston, excepting the lots numbered 1 to 22, inclusive, in the 9th, 10th, 11th, and 12th concessions, and the whole of the concessions numbered 13, 14, 15, and 16 in said township.

4. The Village of Arnprior and the Township of McNab.

5. The Townships of Bagot, Blythefield, Brougham, and Matawatchan, and all the lots Nos. 1 to 22, inclusive, in the 9th, 10th, 11th, and 12th concessions in the said Township of Admaston, and the whole of the concessions numbered 13, 14, 15, and 16 in the said townships.

6. The Townships of Grattan, Sebastopol, South Algoma, North Algoma, and all that part of the Township of Wilberforce from the 1st to the 17th concessions, both inclusive, excepting those parts of the 14th, 15th, 16th, and 17th concessions of the said Township of Wilberforce lying north of Snake River and east of Lake Dore.

7. The Township of Bromley and all that part of the Township of Westmeath west of Muskrat Lake, and all those parts of the Township of Ross from the 1st to the 4th concessions, both inclusive; east of Muskrat Lake and from the 1st to the 6th of the other concessions, both inclusive, of the said Township of Ross.

8. The Townships of Brudenell, Radcliffe, Raglan, Lynedoch, Griffith, Hagarty, Sherwood, Jones, Richards, and Burns.

County of Simcoe.

1. The Town of Barrie, the Township of Vespra, except that portion lying west of the Nottawasaga River, and excepting also lots Nos. 38, 39, and 40 in the 1st and 2nd concessions, and lots Nos. 1, 2, and 3 in the 3rd, 4th, 5th, 6th, and 7th concessions, respectively. That portion of the Township of Oro lying south of lots Nos. 21 in the 1st and 2nd concessions (including the Ranges), and south of lots Nos. 13 in the 3rd, 4th, 5th, 6th, 7th, and 8th concessions, respectively; that portion of the Township of Innisfil lying east of lots Nos. 5 in the 6th, 7th, and 8th concessions, and that portion lying north of the 8th concession; that portion of the Township of Essa lying north of lots Nos. 19 in the 7th, 8th, 9th, 10th, and 11th concessions.

2. The Village of Bradford; the Township of West Gwillimbury, excepting thereout lots Nos. 1, 2, 3, 4, and 5 in the 14th and 15th concessions; the Township of Innisfil, except that portion lying north of the 5th concession, and excepting also lots Nos. 1, 2, 3, 4, and 5 in the 1st, 2nd, 3rd, 4th, and 5th concessions.

3. The Township of Tecumseth, except concessions 12, 13, 14, and 15; the Township of Adjala, except that portion lying north of lot No. 25 in the 8th concession thereof.

4. The Town of Collingwood, the Village of Stayner, that portion of the Township of Nottawasaga lying north of lots Nos. 18 in the twelve concessions thereof; that portion of the Township of Sunnidale lying north of the 8th concession; that portion of the Township of Flos lying west of the Nottawasaga River; the islands of Lake Huron contiguous to the Township of Nottawasaga.

5. The Township of Flos, except that portion lying west of the Nottawasaga River; the Township of Medonte, except that portion lying east of the 10th concession: and north of lots Nos. 10 in the 9th and 10th concessions, respectively; that portion of the Township of Oro lying north of the southern boundaries of lots Nos. 21 in the 1st and 2nd concessions, and north of the southern boundaries of lots Nos. 13 in the 3rd, 4th, 5th, 6th, 7th, and 8th concessions, respectively; lots 38, 39, and 40 in the 1st and 2nd concessions, and lots Nos. 1, 2, and 3 in the 3rd, 4th, 5th, 6th, and 7th concessions of the Township of Vespra.

6. The Town of Orillia, the Township of Orillia, southern division, the Township of Orillia, northern division, except that portion lying north of lots Nos. 15 in the first seven concessions thereof; that portion of the Township of Oro lying east of the 8th concession; that portion of the Township of Medonte being composed of lots Nos. 1 to 6, both inclusive, in the 11th, 12th, 13th, and 14th concessions; the islands in Lake Simcoe contiguous to the townships and portions of townships above described lying wholly or for the most part opposite thereto.

7. The Township of Nottawasaga, except that portion lying north of lot No. 18 in the 12th concession thereof; the Township of Sunnidale, except that portion lying north of the 8th concession; that portion of the Township of Vespra lying east of the Nottawasaga River; that portion of the Township of Essa lying north of lots Nos. 19 in the 1st, 2nd, 3rd, 4th, 5th, and 6th concessions; that portion of the Township of Tossorontio lying north of lots Nos. 20 in each of the seven concessions thereof.

8. The Township of Essa, except that portion lying north of lots Nos. 19 in each of the eleven concessions thereof; the Township of Tossorontio, except that portion lying north of lots Nos. 20 in each of the seven concessions thereof; that portion of the Township of Innisfil being composed of lots Nos. 1, 2, 3, 4, and 5 in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th concessions; the 12th, 13th, 14th, and 15th concessions of the Township of Tecumseth; lots Nos. 1, 2, 3, 4, and 5 in the 14th and 15th concessions of the Township of West Gwillimbury; that portion of the Township of Adjala lying north of lots Nos. 25 in the eight concessions thereof.

9. The Town of Penetanguishene, and the Village of Midland, the Township of Tiny; that portion of the Township of Tay lying west of the 8th concession; the islands in Lake Huron contiguous to the Township of Tiny and to that part of the Township of Tay forming part of the 9th division, and lying wholly and for the most part opposite thereto.

10. The Township of Matchedash, that portion of the Township of Orillia, northern division, lying north of lots Nos. 15 in the first seven concessions thereof; that portion of the Township of Medonte lying north of lots Nos. 6 in the 11th, 12th, 13th, and 14th concessions, and that portion lying north of lots Nos. 10 in the 9th and 10th concessions thereof; the Township of Tay,

except that portion lying west of the 8th concession; the island in Lake Huron contiguous to that part of the Township of Tay forming part of the 10th division, and lying wholly or for the most part opposite thereto.

NOTE.—Each of the said several divisions shall include all allowances for roads embraced within its external limits, and shall also extend to the centre of every allowance for road lying external and adjacent to every such division, excepting always where any such last-mentioned allowance is hereinbefore declared to belong to or form part of any particular division.

UNITED COUNTIES OF STORMONT, DUNDAS, AND GLENGARRY.

1. Township of Charlottenburg, in the County of Glengarry.
2. Township of Lochiel, in the County of Glengarry.
3. Town and Township of Cornwall, in the County of Stormont.
4. Township of Osnabruck, in the County of Stormont.
5. Township of Williamsburg, in the County of Dundas.
6. Township of Matilda, in the County of Dundas.
7. Township of Mountain, in the County of Dundas.
8. Township of Finch, in the County of Stormont.
9. Township of Lancaster, in the County of Glengarry.
10. Township of Winchester, in the County of Dundas.
11. Township of Roxborough, in the County of Stormont.
12. Township of Kenyon, in the County of Glengarry.

DISTRICT OF THUNDER BAY.

1. All that part of the district lying west of the meridian of 87 degrees of west longitude to the meridian of the most easterly part of Hunter's Island, excepting therefrom the Municipality of Neebing.

2.

3. The Municipality of Neebing.

COUNTY OF VICTORIA.

1. The following townships and parts of townships, viz.: Of the 15th concession of the Township of Mariposa, and the Township of Eldon, except the ranges north and south of Portage Road.

2. The following townships: All of the Township of Fenelon except that portion lying east of the Scugog River and south of Sturgeon Lake, and the Township of Somerville.

3. The Township of Verulam.

4. The Township of Emily.

5. The Town of Lindsay, Township of Ops, and that portion of the Township of Fenelon lying east of the Scugog River and south of Sturgeon Lake.

6. The Township of Mariposa, except the 15th concession.

7. The Townships of Carden and Dalton, Laxton, Digby, and Longford, and the Township of Bexley, and that portion of the Township of Eldon north of Portage Road, and the range south of Portage Road.

County of Waterloo.

1. All that portion of the Township of Waterloo lying north of Block Line on the west side of the Grand River, and that part of the upper block of said township lying on the east side of the Grand River north of lots Nos. 115, 109, 104, 86, and 95, to the Guelph Township line, including the Towns of Berlin and Waterloo.

2. All that part of the Township of Waterloo lying south of the Block Line on the west of the Grand River, and that part lying on the east side of the Grand River, south of the northern boundary of lots Nos. 115, 109, 104, 86, and 95, to the Guelph Township line, including the Villages of Preston and Hespeler.

3. All that part of the Township of North Dumfries lying east of lot No. 19, in the 7th concession; and running a course with the eastern boundary of the said lot in a northerly direction up to the 12th concession; thence along the eastern boundary of lot No. 23 in the said 12th concession to the township line, including the Town of Galt.

4. The Township of Wilmot, including the Village of New Hamburg.

5. The Township of Wellesley.

6. The Township of Woolwich.

7. All that part of the Township of North Dumfries lying west of the eastern boundary of said lot No. 18, in the 7th concession; thence along the eastern limits of said lot No. 19, the same course thereof, in a northerly direction to the 15th concession; thence along the westerly limit of lot No. 23 in the said 12th concession to the township line, including the Village of Ayr.

County of Welland.

1. The Township of Crowland; that part of the Township of Thorold lying south of the line between lots 178 and 195, running through to Pelham; that part of Pelham lying south of the 4th concession, and that part of Humberstone lying north of the concession line between the 4th and 5th concessions, being the whole of the 5th concession and the Town of Welland.

2. The Township of Wainfleet.

3. The Township of Bertie, and those parts of the Township of Humberstone not included in Nos. 1 and 6, and the Village of Fort Erie.

4. The Township of Willoughby, the Village of Chippawa, and that part of the Township of Stamford south of the line between lots 136 and 137; easterly from the western limit of the township to the southeast angle of lot No. 133; thence north on the line between lots Nos. 132 and 133 to the northern boundary of the township, including the Town of Clifton and Navy Island.

5. Those parts of the Townships of Stamford, Thorold, and Pelham, not included in any other division, and the Town of Thorold.

6. All the Township of Humberstone lying south of the 5th concession, and west of the side lines, between lots Nos. 9 and 10 in the several other concessions thereof, and the Village of Port Colborne.

COUNTY OF WELLINGTON.

1. The Town and Township of Guelph.

2. The Township of Puslinch.

3. The Township of Eramosa.

4. The Township of Nichol, excepting the 11th and 12th concessions; the Municipality of Fergus; the first eight concessions of the Township of Garafraxa, and lots 1 to 18, both inclusive, in concessions A and B of the Township of Peel, lots 13, 14, 15, 16, 17, and 18 in concessions 18 and 19, and lots 19, 20, and 21 in the 17th concession of the Township of Peel.

5. The Township of Erin.

6. The Township of Pilkington, and the 11th and 12th concessions of the Township of Nichol; the Municipality of the Village of Elora; and lots Nos. 19 and upwards belonging to the 9th, 10th, 11th, 12th, 13th, 14th, 15th, and 16th concessions of Peel.

7. Concessions 1 to 16, inclusive, of the Township of Maryboro, and concessions 1 to 16, both inclusive, of the Township of Peel, except lots 19, 20, 21, 22, and 23 of those concessions in that township.

8. That part of the Township of Arthur south and southeast of lot 15 on the west side of the Owen Sound Road; lot 16 on the Owen Sound Road, and lot 12 east of the Owen Sound Road, in the Township of Arthur; that part of the Township of Luther from lots 1 to 16, both inclusive, and lots 1 to 12, both inclusive, of the 17th and 18th concessions of the Township of Peel; lots 5 to 11, both inclusive, of the 19th concession of said Township of Peel; and lots 19 to 23, both inclusive, of concessions A and B of the said Township of Peel.

9. (The territory formerly comprised in this division is now in the County of Dufferin.)

10. The Township of Minto.

11. The Town of Mount Forest, and that part of the Township of Arthur north of lot 16, west of the Owen Sound Road; lot 17, on the Owen Sound Road, and lot 13, east of the Owen Sound Road.

COUNTY OF WENTWORTH.

1. All that part of the Township of Barton lying east of the line between lots 14 and 15, and all that part of Hamilton City east of Hughson Street.

2. The whole of the Township of Flamboro' West.

3. The whole of the Township of Flamboro' East.

4. The whole of the Township of Beverly.

5. The whole of the Township of Saltfleet.

6. The whole of the Township of Ancaster.

7. The whole of the Township of Glanford.

8. The whole of the Township of Binbrook.

9. All that part of the Township of Barton lying west of the lines between lots 14 and 15, and that part of Hamilton City west of Hughson Street.

COUNTY OF YORK.

1. The City of Toronto east of Yonge Street, at date of 14th September, 1875 (*i.e.*, Bloor, Sherbourne, and Howard Streets on the north, the Don on the east, down to Queen Street, then all south of Queen Street as far as Lee Avenue).

2. Concessions 5 to 11, inclusive, of the Township of Markham, and concessions 5 to 10, inclusive, of the Township of Whitchurch, from 1 to 10, inclusive, together with the Villages of Markham and Stouffville.

3. Concessions 1 to 4, inclusive, of the Township of Markham; and concessions 1 to 4, inclusive, of the Township of Whitchurch, from lot 1 to 10, inclusive; and concessions 1 to 4, inclusive, of the Township of Vaughan.

4. The Township of Whitchurch from the line between lots 10 and 11 northward, and the Township of East Gwillimbury.

5. The Townships of Georgina and North Gwillimbury.

6. The Township of King and the incorporated Village of Aurora.

7. Concessions 1 to 11, inclusive, of the Township of Vaughan.

8. All that portion of the Township of York lying west of Yonge Street, and the Township of Etobicoke.

9. Township of Scarboro, and all that portion of the Township of York which lies east of Yonge Street and the Village of Leslieville.

10. The City of Toronto west of Yonge Street, at date of 14th September, 1875 (*i.e.*, Bloor Street on the north, and Dufferin Street on the west).

STATUTES AMENDING THE DIVISION COURTS ACT

LIBRARY

STATUTES AMENDING THE DIVISION COURTS ACT

Passed since the Publication of Volume I.

56 VICTORIA, CHAPTER 15.

An Act to Amend The Division Courts Act.

[*Assented to 27th May*, 1893.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. Clause (*a*) of sub-section 1 of section 70 of *The Division Courts Act* is hereby amended by adding thereto the words following, "and also in any such personal action if all the parties consent thereto in writing and if the amount claimed in such last mentioned personal action does not exceed $100." Rev. Stat., c. 51, s. 70, amended. Jurisdiction extended.

It is not likely that this section will be found of any great utility. In the English County Courts the jurisdiction is unlimited in a common law action, with the written consent of both parties. His Honor, Judge Chalmers, in an article entitled "The County Court System," 3 L.Q.R. 1, said at page 5: "The sensible course would be to enact, as Lord Bramwell and several other witnesses suggested, that the plaintiff might bring an action for any amount in the County Court, but that the defendant might, as of right, remove it into the High Court if the sum claimed, or interest involved, exceeded a specified amount. Different amounts might be specified in different classes of business. In appearance, this would be a small change from the rule which gives unlimited jurisdiction with the written consent of both parties; but, in reality, the change would be considerable. The present law as to written consents is practically a dead letter. When the parties are stripped for a fight, they will not shake hands over the tribunal."

Personal action.—Personal actions are defined in vol. 1, p. 75: *see* also Whidden v. Jackson, 18 A.R. 440.

2. The said section is further amended by adding thereto the following as sub-section (1*a*) :— Rev. Stat., c. 51, s. 70, amended.

Accumulated interest on ascertained claims.

(1*a*) Interest accumulated upon any claim of the class mentioned in clause (*c*) of the preceding sub-section, since the amount or balance was so ascertained by the signature of the defendant or of the person whom he represents shall not be included in determining the question of jurisdiction, but interest so accumulated may be recovered in a Division Court in addition to the said claim, notwithstanding the interest and the amount of the claim so ascertained together exceed the sum of $200.

Formerly, the law was that where interest would bring the amount over $200 the excess had to be abandoned, or prohibition would be awarded either *quousque* until the judgment should be reduced to the proper amount, or partially as to the excess: *Re* Young v. Morden, 10 P. R. 276; *Re* Elliott v. Biette, 21 O R. 595.

Right to enter judgment for portion of claim not disputed.

3. In any case where no dispute is entered as to a portion of a claim sued for in a Division Court, or where a portion of the claim is admitted by the defendant, the plaintiff may, at his option, proceed to judgment and execution for such portion without prejudice to his rights to recover for the remainder of the claim.

This section has also been embodied in rule 117: *see ante* p. 70. For form of judgment, *see* form 78.

---

57 VICTORIA, CHAPTER 23.

An Act to Amend The Division Courts Act.

[*Assented to 5th May*, 1894.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Rev. Stat., c. 51, s. 36, amended.

1. Section 36 of *The Division Courts Act* is amended by adding thereto the following as sub-section 2 thereof:—

Renewal of clerks' and bailiffs' covenants.

(2) In the case of any such covenant requiring periodical renewal to keep it alive and in force, the renewal receipt granted for that purpose, shall be filed with the

Clerk of the Peace in whose office the covenant has been filed, and shall be attached to the covenant to which it refers. The Clerk of the Peace, for receiving and filing the said receipt, shall be entitled to receive from the Clerk or Bailiff for so doing, the sum of fifty cents.

Covenant requiring periodical renewal.—A covenant requiring periodical renewal is a bond or a policy of guarantee of any incorporated or joint stock company empowered to grant guarantees, bonds, covenants, or policies for the integrity and faithful accounting of public officers or other like purposes. Such a guarantee, bond, covenant, or policy may be accepted for a Division Court clerk, under R.S.O., c. 15, s. 24: *see* vol. 1, p. 26.

Limitation.—In any action upon the bond, covenant, or recognizance of suretyship, no damages can be recovered against the surety except as to matters and causes of action which have arisen within ten years next before the commencement of the action: R.S.O., c. 15, s. 27. The inspector of Division Courts exercises a watchful supervision over all covenants, and clerks and bailiffs who take out policies in guarantee companies must be careful to see that the renewal receipt is punctually filed, as required by this section.

Rev. Stat., c. 51, s. 50, s-s. 2, amended.

2. Sub-section 2 of section 50 of the said Act is amended by inserting after the word "being," in the fourth line thereof, the words, "or the Inspector of Division Courts."

The inspector of Division Courts, by virtue of this section, becomes *ex officio* a member of the Board of County Judges. The greater familiarity which the inspector has of the workings of The Division Courts Act and rules will doubtless make him a valuable member of the Board.

Rev. Stat., c. 51, s. 298, amended.

3. Section 298 of the said Act is amended by adding thereto the following as sub-section 5 thereof:—

Inspector to be a member of County Judge's Board.

(5) The Inspector of Division Courts for the time being shall be a member of the said Board.

Rev. Stat., c. 51, s. 144, amended.

4. Section 144 of the said Act is amended by striking out all the words after the word "judgment," in the fourth line, and inserting in lieu thereof the words, "until it is convenient for him to give the same, when he shall forthwith send the same to the Clerk of the Court, who shall, upon the receipt thereof by him, forthwith enter the judgment and notify the parties to the suit of the same; and such judgment shall be as effectual as if rendered in Court at the trial."

Postponement of judgment.

This section relieves the judge of the necessity of naming, at the time of the trial, a subsequent day and hour for the delivery of judgment in writing at

the clerk's office. This section is somewhat in conflict with rule 161, which was passed prior to this statute, but did not come into force until the 1st of July, 1894. Under that rule, notice of the proposed time of delivering judgment was required to be given to the parties. Under this section, such will be unnecessary. The judge may simply reserve judgment and send the same, when ready, to the clerk, who is bound forthwith to enter judgment, without prior notice to the parties. There being a conflict between the rules and the statutes, the question arises as to which is to govern. The rules were passed on the 26th day of January, 1894, and approved 27th January, 1894, but were not to come in force until the 1st of July, 1894. The statute was passed 5th May, 1894, and came into force immediately. The statute being inconsistent with the rule impliedly repeals the same.

In Institute of Patent Agents v. Lockwood, (1894) A.C. 347, at p. 360, Lord Herschell said: "No doubt there might be some conflict between a rule and a provision of the Act. Well, there is a conflict some times between two sections to be found in the same Act. You have to try to reconcile them as best you may. If you cannot, you have to determine which is the leading provision, and which the subordinate provision, and which must give way to the other. That would be so with regard to enactments, and with regard to rules which are to be treated as if within the enactment. In that case, probably, the enactment then would be treated as the governing consideration, and the rule as subordinate to it."

By rule 276, *ante* p. 147, the trial of the cause is not concluded until judgment is delivered.

Rev. Stat., c. 51, s. 155, amended.

5. Section 155 of the said Act is amended by striking out the words "pay to the Clerk" in the sixth line thereof, and inserting in lieu thereof the words, "deposit with the Clerk towards costs in the cause," and by inserting between the word "expenses" and the word "of," in the sixth line, the words "attending the summoning."

In Lewis v. Old, 17 O.R. 615, it was said that fees paid for the expenses of a jury were not taxable against the opposite party. By this section it is intended that the expenses attending the summoning of a jury shall be costs in the cause, and shall be recoverable by the successful party.

Rev. Stat., c. 51, s. 156, amended,

6. Section 156 of the said Act is amended by striking out the words "pay to the Clerk" in the fourth line thereof, and inserting in lieu thereof the words, "deposit with the Clerk towards costs in the cause," and by inserting after the word "expenses" and before the word "of" in the said fifth line the words, "attending the summoning," and by striking out the word "pay" in the eighth line, and inserting in lieu thereof the words "deposit with the Clerk."

See notes to section 5.

7. Section 168 of the said Act is amended by adding at the end thereof the words: "And each juror so called and sworn shall be paid the sum of ten cents; the moneys so paid shall be taxed as costs in the cause." Rev. Stat., c. 51, s. 168, amended.

Where a jury is properly demanded by the parties and duly summoned, the fees are paid by the treasurer of the county: *see* section 72, vol. 1, p. 243.

Where a jury is empanelled by order of the judge, the fees of the jury are to be paid by the clerk, and would be payable by the plaintiff taxable against the party ordered to pay the costs. Hitherto the only enactment as to the fees of such jurors was in the tariff annexed to the original Division Court Rules of 1869. Only jurors called and sworn in the cause will be entitled to the fee. *Quære:* Would the clerk be entitled, under section 54, to refuse to call the jury until he received the moneys which would be required to pay the jurors? It would seem that, as the jury is not called at the instance of either party, no procedure for the collection of their fees is provided.

8. Sections 223, 224, 225, and 226 of the said Act are repealed and the following provisions substituted therefor:— Rev. Stat., c. 51, ss. 223, 224, 225, and 226, repealed.

223.—(1) In case an execution against goods is returned *nulla bona*, and the sum remaining unsatisfied on the judgment under which the execution issued amounts to the sum of $40, the party in whose favor the judgment was entered may sue out an execution against the lands of the party in default, and the Clerk of the Court in which such judgment was obtained shall, at the request of the party prosecuting the judgment, issue under the seal of the Court a writ of execution against the lands of the party in default to the Sheriff of the county in which the said return of *nulla bona* was made, or to the Sheriff of any other county in this Province in which lands of the party in default are situate; and the said Sheriff, on receipt of such execution, shall act upon the same, and it shall have the same force and effect against the lands of the party in default as if the said writ of execution had issued from the County Court. Executions against lands.

(2) Until such judgment is fully paid and satisfied, the party entitled to the same may pursue the same remedy for the recovery thereof, or of any balance due thereon, as if the judgment had been obtained in the County Court.

(3) The Sheriff receiving such writ of execution shall make a return thereof, and pay any money made thereon, to the Clerk of the Court out of which such execution issued.

(4) After an execution has issued against lands under this Act, no further proceedings shall be had in the Court from which the said execution issued, without either an order of the Judge, or unless the judgment creditor, his attorney or agent, shall make and file with the Clerk of the Court from which the said execution issued an affidavit stating (1) That the judgment remains unsatisfied in whole or in part; (2) The amount, if any, which has been paid upon said judgment; (3) That execution against lands has been returned unsatisfied, or that he believes the judgment debtor has not sufficient lands in the county in which said execution against lands was issued to satisfy the said judgment.

(5) No execution against lands shall issue to the Sheriff of any county until a *nulla bona* return has first been made in the cause by a Bailiff of the Court in which the judgment was recovered.

(6) The execution against lands issued under this Act may be in the form contained in schedule D to this Act.

Transcripts to County Court abolished.—By this section, no judgment of the Division Court can hereafter be removed into the County Court. Uncertainty exists as to the right to sue in the County Court or the High Court on a Division Court judgment: *see* Berkeley v. Elderkin, 1 E. & B. 805; Austin v. Mills, 9 Ex. 288; Bailey v. Bailey, 13 Q.B.D. 855; R. v. County Court Judge of Essex, 18 Q.B.D. 706; McPherson v. Forrester, 11 U.C.R. 362; Donelly v. Stewart, 25 U.C.R. 398; Aldrich v. Aldrich, 23 O.R. 376; 24 O.R. 124. *See* also vol. 1, p. 5, and section 210, vol. 1, p. 291; and while the point remains unsettled the position that a Division Court judgment creditor occupies is not at all enviable. If he wishes to enforce the judgment in a foreign court, he will meet with two objections: first, the judgment is not final; second, the judgment is not the judgment of a Court of Record. As to the first objection, the authorities cited above all proceed upon the want of finality of a Division Court judgment. Such want of finality is said to exist on account of the provisions of section 147: *see* vol. 1, p. 215. An action cannot be brought upon a foreign judgment for the recovery of a debt if the judgment does not, finally and conclusively (subject to an appeal to a higher court), settle the existence of the debt so as to become *res judicata* between the parties: Patrick v. Shedden, 2 E. & B. 14; Nouvion v. Freeman, 35 Chy. Div. 704; 37 Chy. Div. 244; 15 App. Cas. 1.

As to the second objection, the objection would not be of any weight in a British tribunal: *see* Taylor on Evidence, 8th ed., 1486; but in some countries no judgment of a foreign tribunal would be enforced unless it were the judgment of a Court of Record.

Equitable execution.—In the County Courts, proceedings by way of equitable execution against lands not subject to an ordinary writ of *fieri facias* may be taken according to established rules: *see* C. R. 1007 and 1008; but the rights on a Division Court execution are not clear. If the judgment debtor be possessed of an equity of redemption in lands subject to two mortgages, the same cannot be sold under, nor will it be bound by, a writ of execution issued pursuant to this section: Samis v. Ireland, 4 A. R. 122; Kerr v. Styles, 26 Grant 309; Johnson v. Bennett, 9 P. R. 337; Peters v. Stoness, 13 P. R. 235; or where there is but one mortgage, but it covers lands in different counties: Goold v. Rich, 4 Chy. Chrs. Reports 87; or where the interest which the debtor has in the land is under an agreement to purchase: *Re* Prittie v. Crawford, 9 C. L. T. 45. It is true that, under section 73 of The Division Courts Act, the Division Courts are to grant such relief, redress, or remedy, or combination of remedies, either absolute or conditional, as might and ought to be done in a like case by the High Court: *see* vol. 1, pp. 88-98; and that by section 304 of the Act the county judges may, in their discretion, adopt and apply the general principles of practice in the High Court. In Wood v. Leatham, 61 L. J. Q. B. 215, it was said, with reference to section 164 of the English County Courts Act, 1888, which is similar in this respect to section 304, that the practice of the High Court of Justice should be followed in all cases where the same is not inconsistent with the provisions of the English County Courts Act. The rule in this province, however, does not appear to be so wide: *see* vol. 1, p. 393, and cases there cited. It is possible that rules 1007, 1008, 1009, 1010, 1011, and 1012 are introduced into the practice of the Division Courts by virtue of sub-section 2 of the principal section, under which the judgment creditor is entitled to pursue the same remedy for the recovery of the judgment, or of any balance due thereon, as if the judgment had been obtained in a County Court. It is clear that, under a judgment obtained in a County Court, proceedings might be taken as provided for in those rules, and there seems to be no reason why the Division Court remedies should not be pursued in the same manner as those in the County Court. In a matter where the title to land may be affected, it is important that these doubts should be removed. If the judgment cannot be sued on, the judgment creditor would be unable to reach assets of the debtor, which, otherwise, would be liable, except by the adoption of the principles and practice of equitable execution. It is submitted, therefore, that a judgment creditor who finds interests in real estate vested in his debtor which his execution will not enable him to sell may move for an order for sale thereof, and may file a *lis pendens* in the registry office upon serving the notice of motion, and such registration will thereupon have the effect of preventing the debtor from disposing of his interest. The judge may then direct an enquiry as to the interest of the debtor, and on such interest being ascertained may direct a sale, or he may direct a sale in the first instance.

The rules referred to are as follows:—

> **1007.** Where a judgment creditor, or a person entitled to money under a judgment or order, alleges that the debtor or person who is to pay has made a conveyance of his lands which is void, as being made to delay, hinder, or defraud creditors or a creditor, it shall not be necessary to institute an action for the purpose of setting aside such conveyance, but a motion may be made to the court or a judge in chambers by the judgment creditor, calling upon the judgment debtor or person who is to pay, and the persons to whom the conveyance has been made, or have acquired any interest thereunder,

to show cause why the land embraced therein, or a competent part thereof, should not be sold to realize the amount to be levied under the execution: R.S.O., 1877, c. 49, s. 10.

1008. Where a judgment creditor in an action, or a person entitled under a judgment or order as aforesaid, alleges that the debtor or person to pay is entitled to or has any interest in any land which, under the former practice, could not be sold under legal process, but could be rendered available in an action for equitable execution by sale for satisfaction for the debt, the court or a judge in chambers may, upon the application of the creditor, call upon the debtor or person who is to pay, and the trustee or other person having the legal estate in the land in question, to show cause why the said land, or the interest therein of the debtor or the person who is to pay, or a competent part of the said land, should not be sold to realize the amount to be levied under the execution: R.S.O., 1877, c. 49, s. 11.

1009. Upon any application under either of the two preceding rules, such proceedings shall be had, either in a summary way, or by the trial of an issue, or by an action, or otherwise, as the court or judge may deem necessary or convenient for the purpose of ascertaining the truth of the matter in question, and whether the land of the debtor's or other person's interest therein are liable for the satisfaction of the execution; but if in a case in a County Court there is a dispute as to material facts, and the value of the land, or the debtor's or other person's interest therein, appears to be over $400, the court or judge shall direct a trial of an issue in the High Court, and may name the county in which the trial is to take place, subject to any order that the High Court, or a judge thereof, may deem fit to make in that behalf: R.S.O., 1877, c. 49, s. 12.

1010. In County Court cases, the application under rules 1007 and 1008 shall be made to the County Court, or to a judge of a County Court, or the county or union of counties in which the land to which the application relates are situated, unless the said court or judge, upon the hearing of the application, deems it more convenient and more conducive to the ends of justice to order, and orders, that the proceedings to be had and taken in the court or before a judge of the court from which the execution issued; in which case the clerk of the County Court of the county in which the land lies shall transmit the papers filed with him, together with the order of transference, to the clerk of the county from which the execution issued: R.S.O., 1877, c. 49, s. 13.

1011. Where, in a summary way, or upon the trial of an issue, or as the result of any enquiries under the four preceding rules, any land, or the interest of any debtor or other person therein, is found liable to be sold, an order shall be made by the said court or judge, declaring what land or what interest therein is liable to be sold, and directing sale thereof by the master, according to the usual practice: R.S.O., 1877, c. 49, s. 14.

1012. Any notice of motion for an order under rules 1007, 1008, or 1010, may contain a description of the land in question, and, upon filing the same with the proper officer, signed by the solicitor of the applicant, a certificate of *lis pendens* may be issued for registration, and in case the said motion is refused in whole or in part a certificate for registration of the order may be issued: R.S.O., 1877, c. 49, s. 15.

If these rules should not be applicable an action for equitable execution would be necessary, and such could be brought only in the High Court: Whidden v. Jackson, 18 A.R. 439.

The execution must be for $40.—It will be noticed that, for some unaccountable reason, the legislature, in the same session, enacted two inconsistent statutes dealing with the subject of Division Court executions against lands. Under the above section, the amount of the execution must be $40. 57 Vict., c. 26, however, enacts as follows:—

> **3.** In any action in a Division Court in which judgment is recovered for the sum of $40 or upwards, irrespective of costs, a writ or writs of execution under the seal of the court against the lands of the debtor may be issued by the clerk, directed to the sheriff of the county or counties in which such lands are situate, and the same shall have the same force and effect and shall be executed by the sheriff in the same manner as executions affecting lands heretofore issued from a County Court. The sheriff shall be entitled to the same fees upon any such writ of execution issued from a Division Court as upon writs of execution issued against lands and tenements from a County Court prior to the passing of this Act.

It will be noticed that, under one statute, a return of *nulla bona* is a condition precedent to the issue of an execution against lands. Under the other, no such condition is imposed. Under one statute, the sum remaining unsatisfied on the judgment must be $40, *inclusive* of costs. Under the other, the original amount of the judgment, *irrespective of costs*, must have been $40.

Shall have the same force as if issued from the County Court.—Under such a writ, the lands of the debtor in the county to the sheriff of which the writ is issued will be bound from the time of the delivery of the writ. The judgment creditor will at once, upon such delivery, obtain a charge against such lands. He would be entitled to redeem, and would be entitled to notice of the exercise of a power of sale contained in a mortgage of the lands if the mortgagor "or his assigns" were entitled to such: Commercial Bank v. Watson, 5 U.C.L.J. 163; *Re* Abbot and Medcalf, 20 O.R. 299.

The sheriff could sell an equity of redemption in lands, and also any contingent interest therein, under sections 21-25 of R.S.O., c. 64. The interest of a judgment debtor in the proceeds of lands vested in trustees would not be bound by such an execution: *Re* Lewis and Thorne, 14 O.R. 133. Such interest could be reached by the appointment of a receiver: *see* vol. 1, p. 94.

Pursue the same remedies.—The judgment creditor is not entitled, after the issue of a writ against lands, to take any further proceedings in the Division Court without an order of the judge, except after filing the affidavit mentioned in sub-section 4. In pursuing the same remedies for the recovery of his judgment, as if the judgment had been obtained in the County Court, it will frequently become necessary for further proceedings to be taken in the Division Court. No proceeding can now be taken upon the judgment in the County Court. Had the original sections providing for a transcript to such Court remained, proceedings in the County Court might have been taken for examination, attachment of debts, or other purposes.

Is it intended by the section to take away the right of the judgment creditor to examine the judgment debtor? It would appear that no such examination could take place without a special order of the judge, or after an affidavit in the terms of sub-section 4 had been filed.

Proof of title.—By 57 Vict., c. 26, s. 4, it is enacted :—

> **4.** In proving title under a sheriff's conveyance based upon an execution issued from the Division Court, it shall be sufficient to prove the judgment recovered in the Division Court, without proof of any prior proceedings.

As a general rule, all circumstances required by the statute to give jurisdiction must appear on the face of the proceedings, or by reasonable intendment : *see* cases cited vol. 1, p. 54. The section is intended to avoid the necessity of alleging jurisdiction and proving the regularity of all proceedings in the Division Court. The section does not, in terms, make the judgment conclusive of the jurisdiction of the court, and, although the proof of the judgment will be sufficient to prove a *prima facie* title in the purchaser from the sheriff, there seems to be nothing to prevent the want of jurisdiction or the invalidity of the Division Court judgment from being set up by a person claiming adversely to the purchaser.

By 57 Vict., c. 26, s. 5, it is enacted :—

> **5.** All provisions inconsistent with this Act, contained in any former Act, or in any rule of court, are repealed.

Chapter 23, although passed on the same day, may be said to be a former Act, and the provisions of section 8, where inconsistent with the provisions of section 3, chapter 26, may be said to be repealed : *see* the sections discussed, 14 C.L.T. 209, 212.

Nulla bona return.—It will be noticed that sub-section 5 revives the meaningless practice which was declared to be unnecessary in Jones v. Paxton, 19 A.R. 163. Although a debtor may not reside in the division in which judgment is recovered, it is necessary that a return of *nulla bona* be made by the bailiff of that court. A return of *nulla bona* by the bailiff of a court to which a transcript has been issued would be insufficient.

Appointment of place of office of Division Court clerk.

9. Notwithstanding anything contained in this Act, or in any of the General Rules or Forms now in force, or that may at any time hereafter be in force, in the Division Courts of this Province, the Lieutenant-Governor in Council, may designate and appoint the place within any division where the office of the Clerk of such division shall be situated.

By rule 145, *ante* p. 83, the clerk of every Division Court is required to have an office at such place within the division for which he is clerk, as the judge shall direct. By section 9 of The Division Courts Act, vol. 1, p. 6, where there are two Division Courts in any city, both clerks may, with the approval of the Lieutenant-Governor in Council, have and keep their offices in the same division in such city. Hereafter the Lieutenant-Governor in Council will have power in all cases to direct where the office is to be situated. The office must be within the division, except in cases coming within section 9 of The Division Courts Act.

Books to be kept by clerks.

10. The books to be kept by the Clerk, known as the Procedure Book and Foreign Procedure Book, may be in the respective forms contained in schedules B and C to this Act.

Forms 4 and 10 appended to the rules are, it would seem, no longer necessary to be observed by the clerk, but the forms in schedules B and C to this Act, which are less elaborate, and contain in one column a complete record of the proceedings in the court, are to be adopted in place of the forms provided by the judges.

Fees of clerks and bailiffs.

11. (1) In any action brought in a Division Court when the claim sought to be recovered does not exceed $10, it shall not be necessary that the Clerk should notify the plaintiff that no defence has been entered, nor shall the schedule or tariff of Clerks' or Bailiffs' fees now in force, or that at any time hereafter may be in force, apply to or be taxable in any such action, except the fees for mileage to a Bailiff, the fees for enforcing a warrant of attachment, warrant against the body or writ in replevin, and the fee allowed by item number twenty-four of the schedule of Clerks' fees, for receiving papers from another division for service, entering the same, handing to the Bailiff, receiving and entering his return.

Cases where amount involved not more than $10.

(2) Excepting such fees as are hereinbefore excepted, the fees taxable to and to be received by the several Clerks and Bailiffs of the Division Courts in any action in which the sum sought to be recovered does not exceed $10 shall be as follows:—

(*a*) To the Clerk, for all services rendered by him as such Clerk, from the time of entering the action or suing out a judgment or interpleader summons up to and including the entering of final judgment or final order on any such judgment or interpleader summons in case the action proceeds to judgment or final order..... $1 25

In case the action does not proceed to judgment or final order the fees heretofore or that may hereafter be payable, but not exceeding in the whole the said sum.

For issuing writ of execution, warrant of attachment, or warrant for arrest of delinquent and entering the return thereto	$ 50
(*b*) To the Bailiff, for all services rendered by him as such Bailiff, in serving the summons and making his return thereof to the Clerk of the Court, or any other service that may be necessary before judgment is entered by the Clerk or pronounced by the Judge, mileage excepted	40
For enforcing writ of execution, schedule of property seized or attached, bond, where necessary, and all other necessary acts done by him after seizure, mileage excepted, if money made, or case settled after levy	1 00
Necessary disbursements incurred in the care and removal of property shall be allowed, to be first allowed by the Clerk, subject to the approval of the Judge.	

Sought to be recovered.—The amount for which the claim is made governs the scale of costs, not the amount of the recovery. Should the plaintiff seek to recover more than $10, and succeed for $10 or any less sum, it would be a proper exercise of discretion for the judge to compel the plaintiff to pay the additional fees.

Tariff not to apply.—Where the amount of the claim is not in excess of $10 the tariff of fees will be inapplicable, except the following items :—

(*a*) Bailiff's fees :—Form 2, items 7, 8, and 9 ; item 7, so far as it extends to summons in replevin, warrant of attachment, or warrant against the body.

(*b*) Clerk's fees :—Item 28 (formerly item 24), which is as follows :—

Receiving papers from another division for service ; entering the same ; handing to the bailiff ; receiving and entering his return and transmitting the same (if return made promptly, not otherwise), 30 cents.

Notice that no defence entered.—The concluding clause of rule 162, *ante* p. 92, is abrogated as to suits where the amount sought to be recovered is under $10.

Fees chargeable.—The fee of $1,25 would appear to be chargeable, first, for all proceedings to final judgment; secondly, if a seizure is made and

the goods are claimed and an interpleader summons issues and proceeds to a judgment, a similar fee of $1.25 would be taxable to the clerk; thirdly, if a judgment summons issues and proceeds to an order, a further fee of $1.25 would be taxable to the clerk. A clerk may also charge a further fee of 50 cents for the enforcement of the judgment or order made in such proceedings.

The total fees chargeable in such actions would appear, therefore, to be as follows:—

(1) Proceedings up to and inclusive of judgment.	
Clerk	$ 1.25
Bailiff serving summons, return, service of subpœna, calling case, etc.	.40
Clerk's fees on execution	.50
Bailiff's fees enforcing execution	1.00
Mileage, 12 cents per mile.	
Possession, money, etc. Amount actually disbursed to be allowed by clerk subject to approval of judge.	
(2) Judgment summons, clerk's fee:	1.25
Warrant for arrest and return	.50
Bailiff's fees	.40
Mileage, 12 cents per mile.	
(3) Interpleader, clerk's fees	1.25
Bailiff's fees	.40
Mileage, 12 cents per mile.	
Keeping possession of goods, amount actually disbursed.	
Costs of sale, in the event of a sale being necessary on an interpleader under rule 37, are not provided for; but it would seem that they could not exceed $1.00 by analogy to the item for enforcing writ of execution.	

Actions when defendant resides out of Province.

12. When it is by *The Division Courts Act* provided that a claim may be entered, or an action brought, or that any person or persons may be sued in any Division Court, such action may be brought, notwithstanding that the residence of the defendant is, at the time of bringing the action, out of the Province of Ontario, and such action may be brought in the Division Court in which the cause of action arose, and continued to completion in as full and effectual a manner as might have been the case if the defendant resided in the Province.

Where the cause of action arose.—It would appear that an action cannot be brought against a non-resident of Ontario except in a case where the cause of action wholly arose within the limits of some Division Court in the province: *see* vol. 1, pp. 109-111. If, however, a non-resident is a corporation, firm, or individual, and has an agent with an office as such agent within any division, the summons may be served on the agent whose office or place of business, as such, is either within the division in which the summons or process issued or is nearest thereto: *see* section 101, vol. 1, p. 136.

May sue in any Division Court.—The introductory part of this section is somewhat unfortunately expressed. It is not provided anywhere in The Division Courts Act, except sections 85 and 91, that "a claim may be entered or an action brought, or that any person or persons may be sued in any Division Court." Those sections refer to cases which cannot be brought within the present section. It is, no doubt, intended to provide that where any claim is of the proper competence of a Division Court, but the defendant resides out of the province, an action may be brought against him in the division in which the cause of action arose.

If the defendant is a corporation having its head office out of the province, and the cause of action arose partly in one division and partly in another, the action may be brought in either division: *see* section 84, vol. 1, p. 116.

Under the present section no power is conferred upon a judge to authorize the action to be brought in any division other than that in which the cause of action arose. If the cause of action did not wholly arise within any one division, and an action should be brought against a non-resident, the court would have no jurisdiction. It is doubtful whether it would be necessary in such a case for the defendant to file a notice disputing the jurisdiction under section 176. In Knight v. Medora, 14 A.R. 112, Patterson, J.A., said, p. 113:—"I am satisfied, however, that section 14 (now section 176) deals only with the question of jurisdiction as between one Division Court and another."

Osler, J.A., said, p. 116:—

"The section did not operate to give jurisdiction in default of notice in cases in which The Division Courts Act declares that those courts shall not have any jurisdiction, among which is an action in which the title to any corporeal or incorporeal hereditament shall be brought in question." The court followed *Re* Mead v. Creary, 32 C.P. 1, in which it is said that the notice mentioned in the section is only required when a suit, otherwise of the proper competence of the Division Court, has been brought in the wrong division, and that the section did not operate to give jurisdiction in default of notice as to causes of action over which The Division Courts Act expressly enacts that those courts shall not have any jurisdiction. *See* also the cases cited, vol. 1, p. 25. All the cases that have arisen may be supported upon the principle that the notice is only necessary in cases in which the consent of parties could not give the court jurisdiction, and that it is not necessary in any case where the parties could by consent give such court jurisdiction. The failure to give notice, as required by the Act, may thus be construed as consent to jurisdiction. It is clear that if a defendant resident out of the jurisdiction, and over whom the court would not otherwise have jurisdiction, appears and defends an action, such appearance is a waiver of any objection to the jurisdiction, and a judgment recovered against him in any such action is binding upon him: Warrener v. Kingsmill, 8 U.C.R. 407; Burn v. Bletcher, 23 U.C.R. 28; *Re* Guy v. G.T.R. Co., 10 P.R. 372; Beaty v. Cromwell, 9 P.R. 547; Sears v. Meyers, 15 P.R. 381, 456; but if the defendant was not, at, or during the time proceedings were taken to recover the judgment, a resident of or domiciled within the province, and did not appear therein, the judgment would probably have no effect outside of the province: Schibsby v. Westenholz, L.R. 6 Q.B. 155; McLean v. Shields, 9 O.R. 699; but if by agreement he had submitted himself to the courts of this province, the judgment would be binding upon him: Copin v. Adamson, L.R. 9 Ex. 345; 1 Ex.D. 17.

Garnishment proceedings.—There would seem to be no power to issue a garnishee summons before judgment where the garnishee did not reside within the division in which the cause of action arose, and where the primary debtor resided out of Ontario, unless the provisions of section 101 would be applicable. There seems to be no power to take garnishment proceedings against a garnishee resident out of Ontario, except when the garnishees are a body corporate not having their chief place of business within the province, when proceedings may be taken under sections 182 and 185.

Service of summons on non-residents.

13. The service of the summons in any such case may be made by a Bailiff of the Court out of which it is issued, or by some competent person who may, either before or after the service, be approved by the Judge or the Clerk of the Court for that purpose; but such summons shall be served at least fifteen days before the return day thereof.

Service of Summons.—It would seem that, under this section, there is no method by which a bailiff can be restrained from going out of the jurisdiction to serve a summons and charging 12 cents mileage for expenses, under item 7 of the Tariff of Bailiff's Fees. There does not seem to be any reason why the legislature should provide that the service should be made by any particular person. So long as a literate person makes the service, and the same is properly proved, the service should be valid. It is not necessary in other tribunals that service should be made by an officer of the court, or by a person who is approved by the judge or other officer. Section 12 would authorize service to be made in any foreign country, no matter how far distant, on a defendant who had never been resident within this province, but who, for instance, had entered into a contract through an agent who happened to be within the limits of the Division Court in which the action was brought, which contract the defendant failed to perform. By section 51 of The Division Courts Act, a bailiff cannot be compelled to travel beyond the limits of his division to effect service. It is true that, by the same section, it is provided that he shall not be allowed to charge mileage for any distance travelled beyond the limits of his county, but that provision would seem to be inconsistent with the express terms of this section. It would have been more convenient if the section had provided that the service should be made as the judge or clerk might direct.

Substitutional service.—There would appear to be no additional power conferred by this or the foregoing section to order substitutional service, and such service could not be ordered in any case in which it has hitherto been improper under section 100: *see* vol. 1, p. 133.

At least fifteen days.—The wide terms of section 12 were apparently overlooked in framing this section. The service might be made in Africa, and to allow only fifteen days would plainly be insufficient. It should have been provided that the return day of the summons should be fixed by the judge.

When defendant a foreigner.—Service of process upon a defendant, who is not a British subject, in a foreign country may involve unpleasant questions: Cookney v. Anderson, 1 D.J. & S. 365. The Consolidated Rules provide that notice of the writ, and not the writ itself, shall be served: *see* Beddington v. Beddington, 1 P.D. 426; Henderdson v. Hall, 8 P.R. 353.

Proof of service.

14. The necessary affidavit of service, if not made before a Division Court Clerk, or a commissioner for taking affidavits in the Province, may be sworn before any notary public in the country in which such service has been made, and such affidavit shall be held to be as effectual as if made by a Bailiff of the Court, before the Clerk.

Notary Public.—The reason for restricting the authority of persons to take affidavits of service out of the province to notaries public is difficult to ascertain. The provisions of section 143 authorize the making of affidavits before other persons than those herein enumerated, and section 34 of R.S.O., c. 61, provides that oaths, affidavits, affirmations, or declarations may be administered, sworn, affirmed, or made out of the Province of Ontario, before numerous persons other than notaries public, and that the same for the purpose of and in or concerning any cause, matter, or thing depending or in any wise concerning any proceedings in any court in this province shall be valid and effectual. The result is that any affidavit for use in a Division Court, except an affidavit of service of summons in a foreign country, is good if made before any of the persons enumerated in R.S.O., c. 61, s. 34, while such an affidavit of service is good only when sworn before a notary public in such country, or before a Division Court clerk, or a commissioner for taking affidavits in this province.

Rev. Stat., c. 5, s. 235, amended.

15. Section 235 of *The Division Courts Act* is amended by striking out the word "either" in the 11th line thereof; and the said section is further amended by striking out all the words between the word "directed" in the 12th line of the said section and the word "requiring" in the 14th line thereof.

Judgment summons.—The effect of this section is to require all judgment summonses to be served personally upon the person to whom the same is directed.

Removal of action by *certiorari*.

16. Where it appears in an action otherwise of the proper competency of the Division Court that such Court has not cognizance thereof from the title to land being brought in question or from the validity of a devise, bequest, or limitation under a will or settlement being disputed, the action shall not on that account be dismissed, but may, by writ of *certiorari*, be removed from the Division Court into the High Court upon such terms as to payment of costs or other terms as the Judge making the order thinks fit.

It is difficult to see why this section did not follow the language of 54 Vict., c. 14, which is as follows:—

> 1. When it appears, at any stage of an action brought in the County Court, that such court has not cognizance thereof from any cause, a judge of the High Court, or a judge of the County Court, before whom the action is pending, may order the action to be transferred to the High Court, and the proceedings thenceforward shall be as provided by sections 23, 25, and 38 of The County Courts Act in all like cases.

The present section is more like section 23 of The County Courts Act (R.S.O., c. 47), which was found to be too restrictive in County Courts. The

present section, moreover, is defective in not providing for cases in which the right or title to any incorporeal hereditament or any toll, custom, or franchise comes in question. By section 69 of The Division Courts Act, vol. 1, p. 54, the jurisdiction in such cases is ousted. The term, "title to land," is not used in the Act. There can be no reason for drawing a distinction between the title to a corporeal and the title to an incorporeal hereditament. If the parties in the one case have the right to a *certiorari*, they should have it in the other. As to when the title to land comes in question, *see* vol. 1, pp. 68, 69, and 70.

Action should not be dismissed.—In cases where the court has no jurisdiction, it also has no power to dismiss. The duty of the judge is simply to stop: Hodgson v. Graham, 26 U.C.R. 127; Lawford v. Partridge, 1 H. & N. 621: *see* vol. 1, pp. 70-90.

Writ of certiorari.—The writ of *certiorari* was abolished by C.R. 1140, which came into force in 1888. An order is now issued instead of the writ.

Motion for certiorari.—The motion for *certiorari* must be to a Judge in Chambers, except by consent of the parties, when it may be made before the Master in Chambers: *see* C.R. 30, as amended by C.R. 1287 (17).

For form of affidavit, see additional form 344.

For form of order, see additional form 348.

17. Section 177 of the said Act is amended by adding thereto the following sub-section:—

Rev. Stat., c. 51, s. 177, amended.

Debts due by unmarried persons.

(2) If the debt is alleged or adjudged to be due by an unmarried person having no family depending on him for support, a statement to that effect shall be upon or annexed to the summons served on the garnishee; and in the absence of such statement, such unmarried person may be presumed by the garnishee to have a family depending on him for support.

For form of memorandum, see additional form 256, *ante* p. 308.

Wages to be exempt.—If no such memorandum is endorsed upon the summons, the wages of the primary debtor, to the extent of $25, will be exempt from garnishment, under section 174 of the Act, and the garnishee may, notwithstanding the service of the summons, pay such wages to the primary debtor. If the notice is endorsed, it will be necessary for the garnishee to retain the wages, either until the hearing of the summons, or until an order is made discharging the wages from the attachment. If the endorsement should be false, the primary debtor might move, under section 195, for an order that the money or debt be discharged from the claim of the primary creditor. If it clearly appeared to the judge, upon the return of such motion, that the primary debtor either was married, or, if not married, had a family depending on him for support, he would be justified in discharging the money from the claim of the primary creditor.

Examination of garnishee.

18. In cases in which judgment shall be recovered against a garnishee under sections 184 or 187 of the said Act, such garnishee shall be liable to be examined as a judgment debtor under sections 235 to 248 inclusive of the said Act.

In *Re* Hanna v. Coulson, 23 O.R. 493, it was held that a garnishee against whom judgment had been obtained was not a defendant within section 235 of the Act. An appeal was taken from this decision, and has been argued and stands for judgment. Hereafter the power to examine such a judgment debtor will be clear. It might have been better to have amended sections 235 to 248 by inserting the words "judgment debtor" in place of the word "defendant" wherever it appeared in those sections. Those sections are penal in their nature, and when taken in conjunction with the present section will be strictly construed. The present section merely declares that the garnishee shall be liable to be examined. It does not in terms confer the right of committal, nor the right to order the payment of the debt by instalments. It will probably be found that the present section is insufficient to subject a garnishee to all the consequences of non-payment of a judgment which an ordinary judgment debtor is subject to under the sections referred to.

Rev. Stat., c. 51, amended.

19. The said Act is amended by adding thereto the schedules to this Act as schedules B, C, and D.

Schedules B and C are inconsistent with and practically supersede forms 4 and 20.

Execution against lands.—The form of execution against lands provides that it shall be returnable immediately after the execution thereof. A writ of execution against lands has hitherto been returnable immediately after the expiration of twelve months from the sheriff's receipt thereof. By C.R. 901, it is provided that the sheriff shall not expose the lands for sale under a writ against lands, or sell the same within less than twelve months from the day on which the writ against lands is delivered to him. Under a writ against lands from the County Court, the sheriff would be bound by this rule. A writ from a Division Court is to have the same force and effect as if issued from the County Court. It would seem, therefore, that no sale can be made until the expiration of twelve months from the delivery of the writ to the sheriff.

SCHEDULE B.

(*Section 10.*)

PROCEDURE BOOK.

Division Court of the

No. 189

Ensuing Sittings the day of 189

vs.

of of

189

			No. or initial letter of item of tariff.	Bailiff.	Clerk.	$
		Received particulars of plaintiff's claim ( ) for $, and $ towards costs Issued ( ) summons to Summons ret'd. Served the day of 189 , by miles, The defendant having been served with special summons and particulars of claim, and not disputing the same, it is adjudged that the plaintiff recover $ for debt, and $ for costs.				

Clerk.

SCHEDULE C.

(*Section 10.*)

FOREIGN PROCEDURE BOOK.

' ivision Court of the

No.

vs.

189

	Received summons from County of Issued summons to Bailiff Summons ret'd. Served the by	Division Court, Rec. Aff. day of Post.	
	Ret'd to Clerk of County of	Division Court, Bailiff's fees. Miles. Ser. Att.	

SCHEDULE D.

(*Section 8.*)

Execution against Lands.

In the Division Court of the Count of

Between A.... B...., *Plaintiff*,

and

C.... D...., *Defendant.*

Whereas, on the day of , A.D. 18 , the plaintiff duly recovered in the said court, holden in and for said division, judgment against the defendant for $ for debt, and $ for costs of suit, which remain unsatisfied (*when judgment has been revived, add*, "and on the day of , A.D. 18 , the said judgment was duly revived"): You are hereby required to levy of the lands and tenements of the defendant in the said Count the said moneys, amounting together to the sum of $ and interest thereon at the rate of six per cent. per annum, from the day of , A.D. 18 , together with your own fees, poundage, and incidental expenses; so that you may have the same immediately after the execution hereof, and pay the same over to the clerk of this court for the plaintiff.

Given under the seal of the court this day of , A.D. 18 .

Z.... Y....,

Clerk.

To V.... W....,

Sheriff of the Count of

Rules of the High Court of Justice Referring to Division Courts.

1370. Rule 1163 is amended by adding thereto the following clause :—

(4) "Where the amount of the execution or the value of the goods does not exceed $100 the issue may be directed to be tried in the Division Court, and thereafter all proceedings shall be carried on in said Court."

1371. Rule 1164 is amended by inserting after the words "County Court" the words "or Division Court, as the case may be."

1372. Rule 1165 is amended by inserting after the word "Court" wheresoever it occurs the words "or Division Court."

The rules which are amended are those relating to interpleader proceedings, and the intention of the amendments is to authorize the judges of the High Court and County Courts to direct an issue to be tried in the Division Court in all cases of interpleaders by a sheriff or other officer, on an execution issued out of the High Court or a County Court. The judges of the High Court have no power to make rules with reference to the jurisdiction on the practice or proceedings in a Division Court. Their powers are conferred by The Judicature Act, R.S.O., c. 44, s. 105, and The County Courts Act, R.S.O., c. 47, s. 54. There is no statute giving the Division Court jurisdiction to try issues sent from the High Court or a County Court. The rules of the Supreme Court are of no force unless they come within the terms of the statute conferring the power to make them : Institute of Patent Agents v. Lockwood, (1894) A.C. 347. It may be that the questions arising on an interpleader may be referred under section 101 or 102 of The Judicature Act to a County Court judge, or tried summarily by a County Court judge by consent of parties under C.R 1148 ; but such a trial would not be a trial by the Division Court, and the decision thereon would be subject to appeal, whereas a trial by a Division Court (*qua* Court) would be final.

APPENDIX

LIBRARY

OTHER ACTS APPLICABLE TO OR CONFERRING JURISDICTION ON DIVISION COURTS

R.S.O., CHAPTER 1.

An Act respecting the Form and Interpretation of the Statutes.

Section 8, sub-section 30. Where a pecuniary penalty or a forfeiture is imposed for a contravention of any Act, then, if no other mode is prescribed for the recovery thereof, the penalty or forfeiture shall be recoverable with costs by civil action or proceeding at the suit of the Crown only, or of a private party suing as well for the Crown as for himself, in any form allowed in such case by the law of this Province, before a Court having jurisdiction to the amount of the penalty in cases of simple contract, upon the evidence of one credible witness other than the plaintiff or party interested ; Recovery of penalties when no special mode is prescribed.

If no other provision is made for the appropriation of the penalty or forfeiture, one-half thereof shall belong to the Crown, and the other half shall belong to the private plaintiff, if any there be, and if there be none, the whole shall belong to the Crown. Appropriation.

R.S.O., CHAPTER 15.

An Act respecting Public Officers.

25. Every covenant hereafter entered into for or in behalf of a Sheriff, Registrar, Division Court Clerk, or Bailiff aforesaid, in pursuance of any statute requiring security from any of such officers, or in pursuance of the preceding section, shall enure for the benefit of Her Securities by sheriffs, registrars, Division Court clerks and bailiffs, and actions thereon by the Crown.

Majesty; and Her Majesty may bring and maintain an action thereon in respect of any damages suffered by Her Majesty or by the public on account of any misconduct, neglect, or default of the officer in either instance, with the like effect as a private person suffering damages as aforesaid might, and may also sue in any other mode by which Her Majesty may sue upon a covenant.

Affidavits of justification and of execution may be made before the justice of the peace or commissioner.

26. Where by an Act of the Legislature of the Province any person appointed to any public office authorized to perform any official duties is required to give or enter into any bond or other security for the proper performance of his duties, any affidavit of qualification or justification required to be made by such person, or by the sureties in any such bond and any affidavit of the due execution of such bond or security, may be made before a Justice of the Peace, or before a Commissioner authorized to take affidavits to be used in the High Court.

Limitation as to liabilities of sureties of public officers.

27. Where any person, company, or corporation is surety for the performance by a Sheriff, Registrar of Deeds, or Clerk, or Bailiff of a Division Court, or by any other public officer, or by any person appointed to any civil office, employment or commission in any public department in the Government of this Province, or to any office or employment of public trust, whether the suretyship is for the benefit of the Crown or enures for the benefit of any person injured by the default or misconduct of such officer or other person, and any action is brought upon the bond, covenant, or recognizance of suretyship, no damages shall be recovered in the action against such surety except as to matters and causes of action which have arisen within ten years next before the commencement of the action.

29. Every Clerk of a County Court and every Registrar of a Surrogate Court and every Clerk of a Division Court for a division embracing a city or part of a city, shall keep a separate book, in which he shall enter from day to day all fees, charges and emoluments received by him by virtue of his office, showing the sums received by him for fees, charges and emoluments of all kinds whatsoever, and shall on the 15th day of January in each year make up to and including the 31st day of December of the previous year a return to the Lieutenant-Governor, under oath, of such fees, charges and emoluments so received by him during the said year. County Court and Division Court clerks and registrars of Surrogate Court.

R.S.O., CHAPTER 35.

An Act respecting the Sale of Intoxicating Liquors near Public Works.

6. If three persons being voters or entitled to vote at any municipal election of the municipality within which the complaint is made, make oath or affirmation before a Justice, Reeve, Mayor, Police Magistrate, or Judge of a Division Court, that they have reason to believe and do believe that intoxicating liquor intended for sale or barter in contravention of this Act, is kept or deposited in a steamboat or other vessel, or in a carriage or vehicle, or in a store, shop, warehouse or other building or place in the municipality, or on any river, lake, or water adjoining the same, at any place within which intoxicating liquor is by this Act prohibited to be sold, or bartered, or kept for sale or barter, the Justice, Reeve, Mayor, Police Magistrate, or Judge shall issue his warrant of search to any Sheriff, Police Officer, Bailiff, or Constable, who shall forthwith proceed to search the premises, steamboat, vessel, or place described in the warrant, and if intoxicating liquor be found therein, he shall seize the same, and the barrels, casks, or other packages in which Search for liquors allowed in certain cases. Seizure

Dwelling house not to be searched except in certain cases.

it is contained, and convey them to some proper place of security, and there keep them until final action is had thereon; but no dwelling house in which, or in part of which a shop or bar is not kept, shall be searched, unless one at least of the complainants testifies on oath to some act of sale of intoxicating liquor therein or therefrom, in contravention of this Act, within one month from the time of making the complaint.

R.S.O., CHAPTER 126.

An Act respecting Liens of Mechanics and Others.

Enforcement of lien in Division and County Courts.

28. (1) Where the amount of the claims in respect of any lien is within the jurisdiction of the County or Division Courts respectively, proceedings to recover the same, according to the usual procedure of the said Court by judgment and execution, may be taken in the proper Division Court or in the County Court of the county in which the land charged is situate; or proceedings may be taken before the Judge of the said Courts, who may proceed in a summary manner by summons and order, and may take accounts and make requisite inquiries, and in default of payment may direct the sale of the estate and interest charged and such further proceedings may be taken as the Judge directs.

Conveyance by County Court Judge

(2) Any conveyance under the seal of the County Court Judge shall be effectual to pass the estate or interest sold.

Fees.

(3) The fees and costs in all proceedings taken under this section shall be such as are payable in respect of the like or similar matters according to the ordinary procedure of the said Courts respectively.

53 VICTORIA, CHAPTER 37.

An Act to Simplify the Procedure for enforcing Mechanics' Liens.

[*Assented to 7th April*, 1890.]

When judgment to be entered in Division Court.

33. Where the amount awarded does not exceed $100 the certificate may be entered with the Clerk of the Division Court of the division in which the debtor resides in like manner as a judgment of such Court is entered, and thereupon the same shall become and be a judgment of such Court, and may be enforced in like manner as any other judgment of such Division Court.

Fees for entering certificates.

34. The fees payable for entering such certificate as a judgment shall be as follows:—

In the High Court	$1 60
In the County Court	80
In the Division Court	50

Act not to affect summary enforcement of mechanics' liens.

36. This Act shall not in any way affect, alter, or diminish the jurisdiction or procedure of the County Courts and Divisions Courts for enforcing mechanics' liens in a summary manner as provided by the 28th section of *The Mechanics' Lien Act*, save in so far as sub-section 1 of section 30 of the said Act is hereby amended.

Rev. Stat., c. 126, s. 30 (1), amended.

39. Sub-section 1 of section 30 of *The Mechanics' Lien Act* is amended so as to read as follows:—

Action by one of several lienholders to be for joint benefit.

30.—1. Any number of lienholders may join in one action or summary proceeding, and any action or summary proceeding brought by a lienholder shall be taken to be brought on behalf of all the lienholders of the same class who shall have registered their liens before or within fourteen days after the commencement of the action, or who shall within the said fourteen days or within such further time as may be allowed for that purpose file in the proper office of the Court where the pleadings are

required to be filed (where the action has been commenced by writ), or in the office where the proceedings are being carried on (where they are being prosecuted in a summary manner) a statement entitled in or referring to the said action of their respective claims.

---

56 VICTORIA, CHAPTER 24.

An Act to further Facilitate the Enforcement of the just Rights of Wage-earners and Sub-contractors.

[*Assented to* 27*th May*, 1893.]

Claims for wages may be prosecuted in Division Courts or County Courts.

10. Every claim for wages not exceeding thirty days' wages, or for a balance equal thereto, may be prosecuted in the proper Division Court within the limits of which the land charged is situate, though the amount claimed or aggregate amounts claimed may be beyond the ordinary jurisdiction of Division Courts; or may be prosecuted in the County Court of the county in which the land charged is situate, though the amount claimed or the aggregate amounts claimed may be beyond the jurisdiction of County Courts, and in either of such cases the several proceedings may be either those provided by *The Mechanics' Lien Act* or as nearly as may be those provided by the *Act to simplify the Procedure for enforcing Mechanics' Liens*, as the claimants shall choose or the Judge direct; or the said proceedings may be varied by the order or authority of such Judge in any way that may conduce to expedition, simplicity, or convenience in the case before him.

Rev. Stat., c. 126. 53 Vict., c. 37.

Service of papers

11. Every claim of lien shall give an address at which all notices and papers may be served, and service of any notice or paper may be effected by sending the same by registered letter post to the address so given.

Consolidation of actions.

12. (1) Where there are actions in the High Court under said Acts or this Act, and also in a County Court or County Courts, or Division Courts or any of these, a Judge of the High Court may consolidate the actions, and give all such directions with respect to the Court in which proceedings after consolidation are to be carried on as well as to the proceedings generally as may be convenient, and as to costs, and shall name the Court in which the proceedings after consolidation are to be carried on.

(2) A Judge of the High Court shall have like jurisdiction where such actions are brought in two or more County Courts, or in a County Court of one county, and one or more Division Courts in another county.

(3) Where there are such actions in two or more Division Courts of any county, or in the County Court of a county, and in a Division Court or Division Courts of the same county, the County Court Judge, or a Judge lawfully acting for him, shall, in such cases have the like jurisdiction with respect to consolidation as a High Court Judge has under the preceding sub-sections in cases to which those sub-sections apply.

Powers of judges as to practice and procedure appeals.

17. The High Court and its Judges, the County Courts, and the Division Courts respectively, and the officers of all the said Courts, and of the Supreme Court shall have the same jurisdiction under the Mechanics' Lien Acts in regard to practice and procedure generally (including the adding of parties), and in regard to the limitation of time contained in sections 6, 7, and 10 of the *Act to simplify the Procedure for enforcing Mechanics' Liens*, as the said Courts, Judges, and officers respectively have in matters under their ordinary jurisdiction; and orders, reports, certificates, and decisions under the said Acts shall be appealable as under the ordinary jurisdiction of such Courts, Judges, and officers respectively, except where under any of the Acts relating to Mechanics' Lien some other provision is made in that behalf.

58 Vict., c. 37.

Jurisdiction of city police magistrate under Rev. Stat., c. 139, extended.

21. In the case of wages due to any mechanic, laborer, or other person in respect of work referred to in the 4th section of *The Mechanics' Lien Act*, the jurisdiction of a Police Magistrate in a city under *The Act respecting Master and Servant* shall extend to wages for thirty days or for a balance equal to the wages for thirty days, though the same or the balance thereof exceed the sum of $40 in the said section mentioned.

Power of city police magistrate where no specific wages agreed upon.

22. (1) Where no specific rate of wages has been expressly agreed to between the parties, the city Police Magistrate aforesaid may order payment of the wages, reckoning the amount thereof according to the current rate of wages in the city in like cases, or according to what may appear to be a just and reasonable allowance.

(2) In case of the master or employer claiming a set-off, the Police Magistrate shall investigate the set-off and give judgment for the balance, if any, due to the claimant of wages after deducting such set-off. The Police Magistrate shall not have jurisdiction to adjudicate upon a claim of set-off exceeding the claim for wages, except to the extent of the wages.

Orders of city police magistrates; how enforced.

23. (1) Any order of a city Police Magistrate for the payment of such wages as aforesaid shall be payable forthwith, and a warrant of distress shall be issued accordingly, unless the master makes oath, and the Police Magistrate believes that the master is unable to make the payment forthwith, and expects to be able to pay and intends to pay the same within the time given, and unless also the Police Magistrate considers the proposed delay to be under all the circumstances reasonable. The Magistrate, if he sees fit, may order security to be given as a condition of delay.

(2) In case of an adjournment at the instance of the master, the adjournment shall be on payment then and there for the claimant's time in attending the Court (the amount to be fixed by the Police Magistrate), unless

the Magistrate sees reason for dispensing with such immediate payment.

Appeals from orders under Rev. Stat., c. 139.

24. In cases under *The Act respecting Master and Servant* for the recovery of any such wages as in this Act mentioned, the orders of a Police Magistrate shall be subject to appeal as the orders of a Division Court Judge would be in like cases.

Entering police magistrate's order as a Division Court judgment.

25. The order of the Police Magistrate for payment may be filed in that Division Court which would be the proper Court for bringing an action for the wages, and on such filing the order shall thereby become a judgment of the said Division Court, and may be treated in all respects and enforced as a judgment of the said Court.

R.S.O., CHAPTER 227.

An Act respecting Separate Schools.

Provision in case of difference between teacher and trustees.

36. All matters of difference between trustees and teachers, in regard to salary or other remuneration, shall be brought and decided in the Division Court by the Judge of the County Court in each county, subject to an appeal, as provided by this Act.

Issue of execution.

37. In pursuance of a judgment or decision given by a County Judge in a Division Court, under the authority of this Act, and not appealed from, execution may issue from time to time to recover what may be due of the amount which the Judge may have decided the plaintiff entitled to, in like manner as on a judgment recorded in a Division Court for a debt, together with all fees and expenses incidental to the issuing thereof and levy thereunder.

54 VICTORIA, CHAPTER 55.

An Act Consolidating and Revising the Public Schools Acts.

[*Assented to 4th May*, 1891.]

Provision in case of difference between teacher and trustees.

138. All matters of difference between trustees and teachers, in regard to salary or other remuneration, shall be brought before the Division Court of the district where the cause of action arose, subject to appeal, as provided by this Act.

Issue of execution.

139. In pursuance of a judgment or decision given by a County Judge in a Division Court under the authority of this Act, and not appealed from, execution may issue from time to time to recover what may be due of the amount which the Judge may have decided the plaintiff entitled to, in like manner as on a judgment record in a Division Court for a debt, together with all fees and expenses incidental to the issuing thereof and levy thereunder.

APPEALS FROM DIVISION COURT DECISIONS.

Appeals from Division Courts. Rev. Stat., c. 226.

179. The Judge of any Division Court wherein any action between teachers, inspectors, trustees, or others acting under this Act, or *The High Schools Act*, is tried may, at the request of either party, order the entering of judgment to be delayed for a sufficient time to enable such party to apply to the Minister of Education to appeal the case.

Minister may appeal to High Court.

180. The Minister may, within one month after the rendering of judgment in any such case appeal from the decision of the Division Court Judge to the High Court at Toronto, by serving notice in writing of such appeal upon the Clerk of the Division Court appealed from,

which appeal shall be entitled "The Minister of Education for Ontario Appellant in the matter between (A.....B..... and C..... D.....)." But nothing herein contained shall be held to interfere with the right of any of the parties to the action exercising the ordinary right of appeal.

Judges to send papers to High Court.

181. The Judge whose decision is thus appealed from shall thereupon certify under his hand to the Registrar of the division of the High Court appealed to the summons and statement of claim and other proceedings in the case, together with the evidence and his own judgment thereon, and all objections made thereto. After notice of appeal has been served as hereinafter provided no further proceedings shall be had in such case until the matter of appeal has been decided by the High Court.

No further proceedings to be taken after notice of appeal.

Judge to certify proceedings to the Minister.

182. On the Judge receiving a notice of appeal from his decision (under the authority of this Act) he shall thereupon certify under his hand to the Minister of Education the statement of claim and other proceedings in the case, together with the evidence and his own judgment thereon, and all objections thereto. The High Court shall give such order or directions to the Court below, touching the judgment to be given in the matter, as the circumstances of the case require. Upon receipt of such order, direction, and certificate, the Judge of the Division Court shall forthwith proceed in accordance therewith.

Order of court.

Proceedings in Division Court when appeal decided.

Costs.

183. The Court may also in its discretion award costs against the appellant, which costs shall be certified to and form part of the judgment of the Court below. All costs awarded against an appellant and all costs incurred by him, shall be paid by the Minister, and charged as contingent expenses of his office.

54 VICTORIA, CHAPTER 57.

An Act Consolidating and Revising the High Schools Act.

[*Assented to 4th May*, 1891.]

Disputes between teachers and trustees.

41. (1) All matters of difference between trustees and teachers of high schools in regard to salary or other remuneration shall be decided in the Division Court by the Judge of the County Court, in each county; provided always, that the decision of any County Judge in such cases may be appealed from, as provided for in *The Public Schools Act*.

Enforcing judgment.

(2) In pursuance of a judgment or decision given by a County Judge in a Division Court, under the authority of this section, and not appealed from, execution may issue from time to time to recover what may be due of the amount which the Judge may have decided the plaintiff entitled to, in like manner as on a judgment recovered in a Division Court for a debt, together with all fees and expenses incidental to the issuing thereof and levy thereunder.

51 VICTORIA, CHAPTER 23.

An Act respecting the Maintenance of Wives Deserted by their Husbands.

[*Assented to 23rd March*, 1888.]

Appeal.

11. The husband or wife may appeal from any order or decision of the Magistrate or Justices to the Judge of the Division Court without a jury, the appeal to be heard at such time and place as he appoints, and the practice as to such appeals, and the powers of the Judge shall, in other respects be the same, as nearly as may be, as by *The Act respecting Master and Servant* are provided for the appeals therein mentioned, save that no bond shall be required, and that proceedings on the order appealed from shall not be stayed pending the appeal, and that where the husband is the appellant he shall pay all costs.

Rev. Stat., c. 138.

54 VICTORIA, CHAPTER 22.

The Woodman's Lien for Wages Act.

[*Assented to 4th May*, 1891.]

Enforcement of liens by suit in District or Division Courts.

7. (1) Any person or persons having a lien upon or against any logs or timber may enforce the same by suit, where the claim does not exceed $200, in the Division Court within whose jurisdiction the said logs or timber or any part thereof may be situated at the time of the commencement of the suit, or where the claim exceeds $200, in the proper District Court where such statement of lien is filed, and such suit may be commenced to enforce such liens, if the same be due, immediately after the filing of such statement, or if credit has been given immediately after the expiry of the period of credit, and such lien claim shall cease to be a lien upon the property named in such statement unless the proceedings to enforce the same be commenced within thirty days after the filing of the statement of claim, or after the expiry of the period of credit. In all such suits the person, company, or corporation liable for the payment of such debt or claim shall be made the party defendant.

Practice and procedure.

(2) There shall be attached to or endorsed upon such writ or summons a copy of the lien filed as hereinbefore provided and no other statement of claim shall be necessary unless ordered by the Court or Judge, and no pleadings or notices of dispute or defence other than such as are required in a suit or proceeding in the Division Court shall be necessary, whether the suit be brought in the District or Division Court. In case no dispute is filed, judgment may be signed and execution issued according to the practice of the Division Court. The Court or Judge may order any particulars to be given or any proper or necessary amendments to be made, or may add or strike out the names of parties at any time, and may set aside judgment and permit a defence or dispute

to be entered or filed on such terms as to him shall appear proper. The writ shall be in the form as nearly as may be of that in use in the Court in which it is issued, but the practice thereafter shall follow as nearly as may be that of the Division Court. Writs may be served anywhere in the Province in the same manner as in other cases, and the judgment shall declare that the same is for wages, the amount thereof and costs, and that the plaintiff has a lien therefor on the property described when such is the case.

Procedure subsequent to execution.

(3) Where an execution has issued and has been placed in the Sheriff's hands for execution and no attachment has been issued, the proceedings for the enforcement of the lien shall be by sale under the execution and the proceedings relating to proof of other claims and the payment of money into Court, and the distribution of the moneys and otherwise shall, as far as practicable, be the same as is hereinafter provided for proceeding upon and subsequent to an attachment.

Procedure where attachment issues.

(4) Where an attachment issues in the first instance either from the District Court or Division Court the statement of claim and defence and proceedings to judgment may be the same, as hereinbefore provided; where a suit has been begun by writ or summons and where an attachment issues after proceedings have been begun by writ or summons the proceedings shall continue and be carried to judgment under the writ or summons except such as are necessary to be taken under the attachment.

Form of attachment.

(5) The form of attachment shall be as nearly as may be the same as are in use in the District Courts or Division Courts. The District Judges and Stipendiary Magistrates of said districts, or a majority of them, may jointly prepare and adopt forms of writs, summons, attachments and other forms for the more convenient carrying out of the provisions of this Act.

(6) In any case, whether commenced by writ or summons or attachment, and whether in a Division or District Court, the Judge may direct that the same shall be disposed of summarily by him in Chambers without waiting for the regular sittings of the Court, upon such terms as to notice and otherwise as the order shall provide, and the same may be so heard and disposed of. Summary disposal of cases.

(7) The Judge may also entertain in Chambers any application to set aside an attachment or seizure, or to release logs that have been seized, and may summarily dispose of the same. Applications in chambers.

8. Where the amount of any claim, filed as aforesaid does not exceed $200, and is not less than $10 upon the production and filing of a copy of such claim and affidavit made and sworn by the claimant of the amount of the claim due and owing, and showing that the same has been filed as aforesaid and stating that :— When attachment to issue from Division Court.

(*a*) He has good reasons to believe and does believe that the logs or timbers are about being removed out of the Province of Ontario, or

(*b*) That the person indebted for the amount of such lien has absconded from the Province, with intent to defraud or defeat his creditors, or

(*c*) That the saw logs or timber are about being cut into lumber or other timber so that the same cannot be identified,

(*d*) And that he is in danger of losing his said claim, if an attachment do not issue, and if affidavits corroborating the affidavit of the plaintiff in respect of paragraphs (*a*), (*b*) or (*c*), be also filed, then the Clerk of the proper Division Court shall issue a warrant under his hand and seal as in the case of an attachment under section 249 of *The Division Courts Act*, directed to the Bailiff of the Division Court commanding such Bailiff to attach, seize, take and safely keep such logs or timber or a sufficient portion thereof to secure the sum mentioned in the

warrant, and the costs of the suit, and of the proceedings to enforce the lien, and to return the warrant forthwith to the Court out of which the same issued.

Transfer of suit from Division Court where proceedings taken in District Court.

28. Where proceedings have been commenced under this Act in the District Court, and proceedings are thereafter brought or are pending against the same logs or timber, or any part of them, in a Division Court, the Judge of the District Court may order the proceedings in the Division Court to be adjourned before him, and shall in his inquiry as hereinbefore mentioned include the claims in respect of which proceedings are pending in such Division Court, and thereafter all persons who shall have filed claims in said Division Court shall be entitled to prove such claims and to share in the benefits of the proceedings in the District Court.

Where suits in several courts.

29. Where suits are brought in several District Courts or in several Division Courts, the procedure under sections 16, 17, 18, and 19 shall be had in the District or Division Court, as the case may be, out of which an execution or attachment first issued unless the Judge shall otherwise order.

Practice.

30. The procedure regulating the practice and action brought in the District Courts or in Division Courts in the said district, shall, so far as they are not inconsistent with this Act, regulate proceedings taken under this Act.

---

55 VICTORIA, CHAPTER 30.

An Act to Consolidate the Acts respecting Compensation to Workmen in certain cases.

[*Assented to* 14*th April*, 1892.]

Section 16, sub-section 7. In such action brought in a Division Court the application for the appointment of assessors, together with any objections made to the persons proposed, shall be forwarded by the Clerk of the Court to the Judge.

57 VICTORIA, CHAPTER 26, 1894.

An Act respecting Writs of Execution.

[*Assented to 5th May*, 1894.]

Writs not to be renewed.

2. It shall not be necessary to renew from year to year any writ of execution now in the hands of a Sheriff *or hereafter issued*, but all such writs of execution shall remain in force for a period of three years, or until satisfied in the meantime by payment or withdrawal by the party prosecuting the same.

Division Court executions.

3. In any action in a Division Court in which judgment is recovered for the sum of $40 or upwards, irrespective of costs, a writ, or writs, of execution under the seal of the Court against the lands of the debtor may be issued by the Clerk, directed to the Sheriff of the county or counties in which such lands are situate, and the same shall have the same force and effect and shall be executed by the Sheriff in the same manner as executions affecting lands heretofore issued from a County Court. The Sheriff shall be entitled to the same fees upon any such writ of execution issued from a Division Court as upon writs of execution issued against lands and tenements from a County Court prior to the passing of this Act.

Proving titles under Division Court executions.

4. In proving title under Sheriff's conveyance based upon an execution issued from the Division Court, it shall be sufficient to prove the judgment recovered in the Division Court without proof of any prior proceedings.

[illegible]

INDEX TO FORMS

A

ABSCONDING DEBTOR (*see* Attachment)—

Affidavit of service of summons on, 214.
for attachment against, 212, 213.
Appraiser's oath, 295.
Appraisement to be endorsed on inventory, 295.
Attachment against, 229.
Bond on sale of perishable goods, 278.
supersedeas to warrant of attachment, 277.
Execution against (under rule 30), 251.

ACCEPTANCE—

Of money paid into court, notice of, 282.

ACTION—

Judgment on confession after, 338.
Notice of, 334.

ADJOINING DIVISION—

Affidavit for leave to sue in, 210.
Schedule to be endorsed on affidavit, 211.

ADJUDICATION (*see* Judgment)—

On interpleader, 271.

ADMISSION—

General heading and conclusion of, 286.
Of claim or part of claim (under section 113), 294
Affidavit of signature to, 295.

ADMINISTRATOR (*see* Executors and Administrators)—

Affidavit of, to revive judgment, 217.
Affidavit to revive judgment against, 217.

AFFIDAVITS AND OATHS—

Affirmations by Quakers, etc., and jurat thereto, 220.
After transcript has been issued (under section 217), 313.
For certiorari, 343, 344,
For immediate judgment, 309.

AFFIDAVITS AND OATHS—*Continued.*

For order to examine a sick, aged, or infirm witness, 312.
For commission to examine witness, 312.
For order to discharge portion of debt from claim of primary creditor, 313.
For leave to sue in adjoining division, 210.
For attachment, 212.
where debt over $100, 213.
For order for writ of replevin, 229.
For judgment summons, 215.
For revival of judgment, 216.
against executor, etc., 217.
For further proceedings after transcript, 218.
For order to garnish debt, 221.
For prohibition, 344.
For judgment summons after being discharged once, 215.
Forms of oaths to witnesses, jury, etc., 219, 220, 321.
Forms of jurat, 209, 220.
General form of heading and conclusion of, in garnishment, 221.
General form of, 209.
Of service of summons, 213.
Of service on absconding debtor at last place of abode, 214.
Of service on absconding debtor where no one found at such place of abode, 214.
Of service on absconding debtor at last place of trading or dealing, 214.
Of execution of confession, 215.
Of execution of any instrument, 216.
Of disbursements to several witnesses, 218.
Of service of garnishee summons on agent of foreign corporation, firm, or individual, 237.
Of service of summons on partnership firm, 311.
Of signature to admission of claim, 295.
Of justification on bond in appeal under *Master and Servant Act*, 303.
Of justification by sureties to appeal bond on appeal from Division Court, 313.
Of justification by sureties to clerk's or bailiff's covenant, 311.
On motion for mandamus, 345.
On application by executor, etc., to revive judgment, 217.
On application to change venue, 220.
Schedule endorsed on affidavit for leave to sue in adjoining division, 211.
To set aside judgment and be allowed to defend on the merits, 310.
To obtain a warrant to bring up a prisoner required as a witness, 314.

AGENT—

Appointment of, for service, 336.

AGREEMENT (*see* Consents and Agreements), 279, 280.
Not to appeal, 280.
To give jurisdiction to a Division Court, 308.

APPEAL—
Agreement not to, 280.
Consent to (under section 148), 279.
Certificate of clerk of proceedings to Court of, 288.
Notice of, and the grounds thereof, 328.
Notice staying proceedings with a view to, 322.
To the High Court, entry of judgment (under section 152), 251.

APPEALS—
Affidavit of justification of sureties, 303, 313.
Approval of bond on, under *Master and Servant Act*, 303.
Bond on, 302.
Clerk's certificate of award, 300.
Demand for jury on, under *Master and Servant Act* and *Tax on Dogs Act*, 303.
Judgment under *Ditches and Watercourses Act*, 299.
Line Fences Act, 303.
Notice of, under *Master and Servant Act*, 302.
Line Fences Act, 300.
Ditches and Watercourses Act, 298.
Tax on Dogs Act, 302.
Order by judge for trial and deposit for costs by appellant, 298, 301.

APPEAL BOND—
Affidavit of justification of sureties, 303, 313.
Notice of application for approval on, 327.
Where the defendant is appellant, 335.
plaintiff is appellant, 335.

APPLICATION—
By bailiff for interpleader, 269
By summons to change place of trial, 288.
For new trial, 314.
Notice of, for order for statement of names, etc., of plaintiff's firm, 286.
for discharge from custody, 342.
for order for examination *de bene esse*, 273.
for approval on appeal bond, 327.
for interlocutory injunction, 340.
To set-off cross-judgment, notice of, 292.
To change venue, affidavit on, 220.

APPOINTMENT—
Of agent for service, 336.

APPRAISERS—

Fees of, 191.
Oath of, in attachment, 295.

APPRAISEMENT—

To be endorsed on inventory in attachment, 295.

ARBITRATION—

Appointment of third arbitrator, 275.
for meeting on reference, 275.
Award, 277.
Enlargement to be endorsed on appointment for meeting, 276.
Order of reference, 275.
containing special clauses, 276.
Summons to witness by arbitrator, 228.

ASSIGNMENT—

Notice of change of plaintiff's title by, 285.
Order to proceed after change of interest, 290.

ATTACHMENT OF DEBTS—

Debt attachment book, 193.
Executions against garnishee for debt and costs, 258.
Executions when claim made by third party, 258.
for garnishee's costs, 259.
under C. R. 943 of High Court, 260.
Judgment debtors' book, 198.
Judge's attaching order, 236.

ATTACHMENT OF GOODS (*see* Absconding Debtor)—

Affidavit for, 212.
where debt over $100, 213.
Against absconding or removing debtor, 229.
Appraiser's oath, 295.
Appraisement to be endorsed on inventory, 295.
Bond on sale of perishable goods, 278.
supersedeas to warrant of, 277.
Inventory of goods seized under, 334.

AWARD (*see* Arbitration)—

Form of, 277.
Minutes of judgment on, 239.

B

BAILIFF—

Application by, for interpleader, 269.
Claim by creditor for damages against, 333.

BAILIFF—*Continued.*

Covenant by, Vol. I., p. 403.
affidavit of justification of sureties, 311.
Tariff of fees of, 188.

BAILIFF'S BOOKS—

Cash book, 202.
Fee book, 201.
Process book, 200.

BAILIFF'S RETURNS—

To writ of replevin, 232.
To executions (*see* Executions), 296.
To clerk at each court, 297.
When rent levied, 296.

BAILIFF'S FORMS—

Appraiser's oath in attachment, 295.
Appraisement, 295.
Covenant, Vol. I., p. 403.
affidavit of justification of sureties, 311.
Notice of sale, 295.
Returns to executions, 296.
to be made to the clerk of each court, 297.

BENEFICIAL PLAINTIFF—

Warning on summons when suit brought for, 225.

BILLS OF EXCHANGE—

Particulars of claim on, 204.

BLIND DEPONENT—

Jurat to affidavit by, 220.

BOND—

Appeal, where plaintiff is appellant, 335.
defendant is appellant, 335.
Approval of, 303.
Affidavit of execution of, 216, 303.
justification of sureties, 303, 313.
Assignment of, in replevin, 232.
For security for costs, 278.
In replevin, 231.
In garnishee proceedings by primary creditor, 238.
On seizure or sale of perishable property, 278.
On supersedeas to warrant of attachment, 277.
On approval under *Master and Servant Act*, 302.
Particulars of claim on, 204.

BOOKS—

Bailiff's process book, 200.
fee book, 201.
cash book, 202.
Clerk's cash book, 194, 195.
fee book, 196, 197.
debt attachment book, 193.
foreign summons book, 199.
judgment debtors' book, 198.
order book, 198.
procedure book, 193, 393.
foreign procedure book, 394.

C

CASH BOOK—

Bailiff's, 202.
Clerk's, 194, 195.

CERTIFICATES AND ORDERS—

For discharge of party from custody, 294.
Of clerk of proceedings to Court of Appeal, 288.
of the peace that clerk's or bailiff's covenant has been filed, 324.
of the peace on copy of covenant, 324.
Of judge of exception to exemption law, 288.
Of judge's approval of clerk's or bailiff's covenant, 323.
Of approval of appeal bond by judge, 325.
Verifying entries in procedure book (under section 45), 287.

CERTIORARI—

Affidavit for, 343.
by plaintiff, 344.
Notice of motion for, 346.
Order for, 347.
Return by judge to, 290.

CHANGE OF TITLE OR INTEREST—

Notice by clerk of, before judgment, 285.
Order to proceed on, after judgment, 290.
to continue proceedings for or against new party, 289, 325.

CHANGE OF PLACE OF TRIAL—

Affidavit for, 220.
Notice on summons for, 223.
Order on application for, 289.
Summons for, 288.

CLAIM (*see* Particulars of Claim)—

Against bailiff by creditor, 333.
Affidavit of signature to admission of, 295.
Admission of (under section 113), 294.
For damages to lands by flooding, 206.
In replevin, 230.
Notice to creditor of, to goods taken in execution, 326.
Notice of leave to dispute, 283.
Of landlord for rent (under section 269), 269.
Of plaintiff, particulars of, 307.
Under *Industrial Schools Act*, 304.

CLERK'S FEES (*see* Clerk's Forms)—

Execution for (under section 55), 255.
Tariff of, 185.
Order for payment of (under section 55), 250.

CLERK'S FORMS—

Certificate of clerk of proceedings to Court of Appeal, 288.
verifying entries in procedure book, 287.
Covenant, Vol. I., p. 403.
affidavit of justification of sureties on, 311.
List of unclaimed moneys in court, 291.
Minute of judgment when judgment postponed, 241.
Notices (*see* Notices)—
by clerk to plaintiff, 281.
of acceptance of money paid into court, 282.
of trial by jury, 283.
of new trial, 283.
of leave to dispute claim (under section 112), 283.
of return of execution (under section 218), 283.
of transfer of proceedings (under section 87), 283.
to either party generally, 284.
to parties of time fixed for delivery of judgment postponed (under section 144 and rule 161), 284.
Particulars in actions against, 206.

COMMITMENT—

Certificate for discharge of party from custody, 294.
For breach of injunction order, 341.
Request of creditor for discharge of debtor arrested, 293.
Warrant of, in default of appearance, 265.
after examination, 265.
for contempt in open court, 266.
form of (under section 240), 339.

COMMISSION—
Affidavit for examination of witness, 312.
Order for, 318.
Return to, 321.
To take evidence, 319.
Instructions endorsed on, 320.

COMPLAINT—
Under *Industrial Schools Act*, 304.

CONFESSION—
Affidavit of execution of, 215.
signature to, 295.
Admission of claim or part of claim, 294.
Judgment on, 243.
after action, 338.
for costs (under section 209), 240.
where some of defendants have been served, and others have confessed, 239.
Of debt after suit, 294.
Where plaintiff consents to payment by instalments, 337.

CONSENTS AND AGREEMENTS—
By plaintiff to confessed judgment being paid by instalments, 337.
Not to appeal, 280.
To give jurisdiction, 280.
To try case in a Division Court, 280.
To an appeal (under section 148), 279.
Undertaking by next friend, 280.

CONTEMPT—
Order for imposition of fine for, 241, 242.
Warrant of commitment for, 265, 266.

CONTRACT—
Particulars of claim in actions of, 202.

CONVICTION—
For penalty or forfeiture, Vol. I., p. 378.

COSTS—
Bond for security for, 278.
Execution for, 261.
Execution on order to pay clerk, 255.
Judgment for, after confession, 240.
defendant's, after discontinuance, 241.
Order on party to pay to clerk (under section 55), 250.
Order for security for, 326.
Of garnishee, execution for, 259.
Undertaking by next friend to be responsible for, 280.

COUNSEL FEE—

Fiat for, 334.

COURT—

Notice of acceptance of money paid into, 282.

COURT OF APPEAL (*see* Appeal)—

COUNTERCLAIM—

Execution for, 252.
Judgment in case of, 240.
Notice of, 207.
Notice of objection to jurisdiction to try, 285.
Particulars of, 208.

COUNTY COURT—

Transcript of judgment on special summons to, 268.

COVENANT—

Affidavit of justification of sureties, 311.
Of clerk or bailiff, Vol. I., p. 403.
Particulars in claim on, 204.

CREDITORS' RELIEF ACT—

Entry in procedure book under, where there is a judgment, 242.
Judgment under, 242.

CROSS-JUDGMENTS—

Entry of partial satisfaction on judge's order setting-off, 293.
Judge's order to set-off, 293.
Notice of application to set-off, 292.

D

DAMAGES—

Claim of, by creditor against bailiff, 333.
Claim of, by claimant in interpleader, 333.
Particulars of claim for, by flooding, 206.

DEATH OF PARTIES—

Notice to clerk of change of plaintiff's title by, 285.
Order to proceed after death of plaintiff after judgment, 289.
Warrant of execution where one of several plaintiffs has died after judgment and before execution, 251.
(*See* Revival of Judgment.)

DE BENE ESSE—

Notice of application to examine witness, 273.
Order for examination, 274.

DEBT ATTACHMENT BOOK, 193.

DEBT OR DAMAGES—

Affidavit to garnish debt, 221.
Confession of, after suit, 294.
Minute of judgment for (*see* Judgment), 238.

DECLARATION—

Affidavit for order for, of names, etc., of plaintiff's firm, 286.
Of names, etc., of plaintiff's firm, 286.
Order for same, 287.

DEFAULT—

Judgment by (*see* Judgment), 238.

DEFENCES—

Clerk's notices of, 281.
Notices of, by defendants, 207.
Notice of withdrawal of, 284.
Untenable, judgment for costs, 247.

DETINUE—

Execution on judgment in, 264.
Judgment for delivery of goods in, 250.
when immediate return ordered with damages and costs, 250.
Particulars in case of, 205.

DELIVERY OF JUDGMENT—

Notice of time fixed for, 284.

DEMAND—

Of jury under *Master and Servant Act* and *Tax on Dogs Act*, 303.
Of statement of names, etc., of plaintiff's firm, 286.
Particulars of plaintiff's demand for nuisance and injunction, 308.

DEPOSIT BY APPELLANT—

Order for, under *Ditches and Watercourses Act*, 298.
under *Line Fences Act*, 301.

DEVASTAVIT—

Suggestion of, in action against executors, 224.

DISBURSEMENTS—

To witness, affidavit of, 218.

DISCONTINUANCE—

Notice of, 285.
Judgment for costs after, 241.

DISCHARGE OF PRISONER—
Certificate for, 294.
Request of creditor for, 293, 338.
Warrant for, 338.

DISMISSAL—
Of action for want of prosecution, 239.

DISPUTING CLAIM—
Clerk's notice of, to plaintiff, 281.
Notices of, 207.
Notice of leave to, 283.

DISPUTING JURISDICTION—
Notice of, 327.

DISTRIBUTION—
Notice of preparation of plan of, 333.
Order changing plan of, 324.
Plan of, 332.

DITCHES AND WATERCOURSES ACT—
Forms of appeal under (*see* Appeals), 298.

DOCUMENTS—
Notice to produce for inspection, 328, 331.

DOGS—
Forms on appeal under Act respecting tax on, 302, 303.

E

ENDORSEMENT—
Of appraisement on inventory in attachment cases, 295, Vol. I., p. 344.
Of warnings on summonses, Vol. I., p. 258, 223, 224, 225, 234, 235.
On affidavit for leave to sue in an adjoining division, 211.
On interlocutory injunction, 341.

ENTRY—
In procedure book, certificate of, 287.
(under *Creditors' Relief Act*), 242.
of judgment in appeal (under section 152), 251.
of satisfaction by cross-judgment, 293.
of order for new trial, 275.
of revival of judgment, 244.

EXAMINATION—
De bene esse, notice of application for, 273.
order for, 274.
Of judgment debtor, warrant of commitment, 265.
affidavit for, 215.
Of defendant, and production of documents, books, etc., 317.
On commission, order for, 318.

EXECUTIONS—
Against foreigner (under section 82), 252.
defendant in a foreign county, 252.
goods of defendant, 251.
plaintiff, 252.
executor, etc., 254.
goods of testator, 254.
garnishee on judgment recovered, 256.
garnishee only, on claim, not a judgment, where no judgment given against primary debtor, 256.
primary debtor and garnishee, 257.
garnishee on judgment recovered against him and primary debtor, 257.
garnishee for debt and costs in attachment (under section 191), 258.
goods of claimant in interpleader, 260.
married women, 262.
absconding debtor (under rule 30), 251.
lands, 394.
Bailiff's return to, 296.
Clerk's notice of return of (under section 218), 283.
For balance of set-off, 252.
For counterclaim, 252.
For executor, etc., on judgment revived, 254.
For non-payment of clerk's fees (under section 55), 255.
For garnishee's costs, 259.
For costs, 261.
For property seized, but unsold for want of buyers, 261.
In action of detinue, 264.
In replevin, against plaintiff, 255.
Notice to creditor of claim to goods taken in, 326.
Notice of return on transcript, 283.
Order postponing for cause shown, 244.
to suspend, 243.
for, for clerk's costs (under section 55), 250.
On transcript from one division to another, 253.
On order on appeal (under *Master and Servant Act*), 262.
On a judgment in favor of a third party in garnishee proceedings, 339.
Under section 82, against resident in foreign country, 252.
Under rule 943, of High Court, 260.
Warrant of, when one of several plaintiffs has died after judgment and before execution, 251.
Where claim made by third party to debt sought to be garnished and effect given to claim, 258, 259.
Warrant to levy fine on witness refusing to give evidence, 263.
Warrant to levy fine on witness refusing to be sworn, 263.
Warrant to levy fine for disobedience to subpœna, 263.

EXECUTION OF DOCUMENTS—

Affidavit of, 216.

EXECUTORS AND ADMINISTRATORS—

Affidavit to revive judgment against, 216.
Entry of judgment reviving judgment for or against, 244.
Executions for and against (*see* Executions), 253, 254.
goods of testator, 254.
Judgments against (*see* Judgments), 244-246.
Notices on summonses in actions against, 224.
Suggestion of devastavit in action against, 224.
Warning on summonses where allegations that assets have come into hands of, since judgment, 225.

EXEMPTIONS—

In garnishee cases, 308, Vol. I., p. 258.
Judge's certificate as to exemption where debt contracted before 1887, 288.

EXPENSES—

Particulars of, in actions of tort, 205.

F

FEE BOOK—

Bailiff's, 201.
Clerk's, 196.

FEES—(*see* Costs)—

Execution on order for clerk's, 255.
Order to pay to clerk (under section 55), 250.
Tariff of Appraisers', 191.
Bailiff's, 188.
Clerk's, 185.
Witnesses', 191.

FIAT—

For counsel fee, 334.

FINES—

Order for imposition of, for contempt, 241, 242.
for non-attendance of juror, 242.
Warrant to levy against witness refusing to give evidence, 263.
refusing to be sworn, 263.
for disobedience to subpœna, 263.

FIRM—
Demand of names, etc., of plaintiffs constituting, 286.
Declaration in reply to same, 286.
Judgment against, 241.
Notice of application for order for names, etc., of plaintiff's firm, 286.
Order for same, 287.

FLOODING LANDS—
Particulars of claim in action for, 206.

FORRIGNER—
Execution against (under section 82), 252.

FORRIGN CORPORATION (FIRM OR INDIVIDUAL)—
Affidavit of service of garnishee summons on agent of, 237.

FOREIGN COUNTY—
Execution against defendant residing in, 252.

FOREIGN PROCEDURE BOOK—
Form of, 394.

FOREIGN SUMMONS BOOK—
Form of, 199.

FRIEND (NEXT)—
Undertaking to be responsible for costs, 280.

G

GARNISHEE—
Affidavit for order to garnish debt, 221.
of service of summons on agent of foreign corporation, firm, or individual, 237.
Bond by primary creditor (under section 196), 238.
Executions against garnishee only, 256.
and primary debtor, 257.
for debt and costs (in attachment), 258.
for costs of, 259.
when claim made by third party, 258.
where judge holds same void, 259.
for garnishee's costs, 259.
under rule 943 of High Court, 260.
General form of headings and conclusion of proceedings in, 221.
Judgment when primary creditor fails, and proceedings continued as between primary debtor and garnishee, 248.
Minute in procedure book against primary debtor and garnishee, 247.
when debt due by garnishee is payable by instalments, 247.

GARNISHEE—*Continued.*

Minute in procedure book when garnishee sets up untenable defence, 247.
Memorandum in wages cases, Vol. I., p. 258.
where claim is for board or lodging, Vol. I., p. 258.
where primary debtor is unmarried and has no family depending on him for support, Vol. I., p. 308.
of judgment in favor of garnishee, primary debtor, or claimant, 247.
Order attaching debt, 236.
discharging moneys from claim of primary creditor, 323.
general form of, 222.
Summons (under section 197) when third party claims money, 248.
Notices and warnings on, Vol. I., p. 258, 234, 235.

GOODS—

Appraisement of, 295.
Execution against, 251.
in interpleader, 260.
Inventory of, seized under attachment, 334.
replevied, 232.
Judgment for delivery of, in detinue, 250.
where immediate return ordered with damages and costs, 250.
Notice of sale of, 295.
to creditor of claim to, taken in execution, 326.
Order for sale of perishable goods or goods which incur expense for food or keeping, 324.
Of testator, execution against, 254.
Perishable, bond on sale of, 278.
Restoration of, bond on, 277.
Unsold for want of buyers, execution on return, 261.

GUARANTY—

Particulars of claim on, 203.

GUARDIAN—

Order appointing, where infant defendant does not name a guardian, 322.
appointing, named by infant defendant, 322.

H

HEADINGS AND CONCLUSION—

In affidavits, 209.
In garnishee proceedings, 221.
Of notices, admissions, orders, etc., 286.

HIGH COURT—
Entry of judgment in appeal to, 251.

I

ILLITERATE DEPONENT—
Jurat to affidavit by, 220.

IMMEDIATE JUDGMENT—
Affidavit for, 309.
Notice of motion for, 327.
Order for (under section 111), 239.

INDUSTRIAL SCHOOLS ACT—
Form of complaint under, 304.
Order on parent or guardian for maintenance under, 304.
Summons for maintenance under, 304.

INFANT—
Order appointing guardian, 322.
Undertaking for costs by next friend of, 280.

INJUNCTION—
Interlocutory, 341.
Notice to be indorsed on same, 341.
Order for committal for breach, 341.
Particulars for, 308.

INSOLVENCY—
Notice to clerk of change of plaintiff's title by assignment, 285.
Order to proceed after change of interest, 290.

INTERPLEADER—
Application of bailiff for, 269.
Adjudication on, 271, 272.
Claim of damages by claimant in, 333.
creditor in, 333.
Execution against goods of claimant in, 260.
Landlord's claim for rent (under section 269), 269.
notice to creditor of claim, 326.
Particulars of claim in, 270, 307.
Summons in, 269.

INTERPRETER—
Oath of, 219.

INVENTORY—
Indorsement of appraisement on, in attachment case, 295.
Of goods replevied, 232.

J

JUDGE—

Certificate by, of exceptions in exemption law, 288.
Return by, to certiorari, 290.

JUDGMENT CREDITOR—

Judgment where execution postponed by consent of, beyond fifty days, 338.
Request by, for release of debtor from prison, 293.

JUDGMENT DEBTOR (*see* Commitment)—

Affidavit for examination of, 215.
Certificate of discharge from custody, 294.
Oath on examination, 219.
Request of creditor for release of, when arrested, 293.

JUDGMENT DEBTORS' BOOK—

Form of, 198.

JUDGMENT SUMMONS—

Affidavit for (under section 235), 215.
(under section 239), 215.
Order upon a, altering an original judgment or order (under section 245), 323.
Summons to defendant after judgment, 225.
after default, 225.
Warrant of commitment, 265, 266, 339.

JUDGMENT—

Affidavit for revival of, 216, 217.
for immediate, 309.
to set aside, and be allowed to defend on the merits, 310.
Against defendant for debt or damages, 238.
defendant for plaintiff's costs of proceeding to trial (under section 154), 337.
defendant for payment of costs, 336,
defendant on confession before action, 337, 243.
defendant on confession after action, 243.
executor or administrator on devastavit, 244.
who admits his representative character and demand, but pleads *plene administravit* and does not prove it, 245.
where *plene administravit* alleged and proved, 245.
where demand proved and defendant does not prove administration, 245.

JUDGMENT—*Continued.*

Against executor or administrator where plaintiff proves demand and defendant proves administration, 245.
in ordinary cases, 246.
where demand denied, 246.
where representative character denied or release pleaded, 246.
where assets wasted, 246.
firm, 241.
garnishee on judgment already entered, 246.
garnishee where debt due by him is payable by instalments, 247.
married women, 240.
primary debtor and garnishee, 247.
Appeal to High Court against, 251.
By default (under section 109), 238.
Clerk's notice of delivery of, when postponed, 284.
Cross-judgment, notice of application to set-off, 292.
Entry of, for defendant's costs after discontinuance, 241.
in procedure book (under *Creditors' Relief Act*) when there is a judgment, 242.
in procedure book of judge's order for executor or administrator to revive, 244.
that judgment be revived against executor, etc., 244.
of partial satisfaction where cross-judgment set off, 293.
in procedure book in interpleader, 275.
Execution on, in favor of third party in garnishee proceedings, 339.
For defendant, 239.
on set-off when part satisfied, 239.
for balance of set-off, 240.
costs, after confession, 240.
debt and unliquidated damages, 338.
part of claim, 318.
Immediate, order for, 238.
In case of counterclaim, 240.
In detinue, for immediate return, 250.
In favor of garnishee, primary debtor, or claimant, 247.
In replevin, 249.
In interpleader, 271, 273.
Minute of, in procedure book, 238, 248.
for clerk when judgment postponed, 241.
Non-suit or dismissal for want of prosecution, 239.
On motion for speedy judgment, 239.
On award, 239.
On confession after action, 238.
Orders for impositions of fines, 241.

JUDGMENT—*Continued.*

Order for, without plaintiff filing note sued on, 242.
Order for payment of costs to clerk (under section 55), 250.
Order to suspend, 243.
Order changing, instead of granting new trial, 274.
Order for (under section 111 and rule 129), 318.
Order to suspend order, judgment, or execution, 243.
postponing execution (under section 147), 244.
Revived, execution for executor, etc., 253.
execution against executor, etc., 254.
Recovered, execution against garnishee on, 256.
Under *Creditors' Relief Act*, 242.
When some defendants served and others confessed, 239.
Where one judge acts for another (under section 22), 337.
Where execution postponed by consent of judgment creditor beyond fifty days, 243, 338.
When garnishee has set up defence which he knew to be untenable, 247.
Where primary creditor fails in garnishee proceedings, 248.

JURAT—

To general affidavits, 209.
To affidavit by illiterate or blind deponent, 220.
To affirmations by Quakers, etc., 220.

JURISDICTION—

Consent to give to Division Court, 280.
Notice disputing, 327.
of objection to, in cases of counterclaim, 285.

JURORS—

Order for imposition of fine for non-attendance of, 242.
Oaths to (*see* Oaths), 219.
Pay list of, 292.
Summons to, 228.

JURY—

Demand of, under *Master and Servant Act* and *Tax on Dogs Act*, 303.
Notice by clerk of trial by, 283.

JUSTIFICATION OF SURETIES—

Affidavit of, to clerk's or bailiff's covenant, 311.
to appeal bond on appeal from Division Court, 313.
on appeal bond under *Master and Servant Act*, 303.

L

LANDLORD—

Claim of, for rent (under section 269), 269.

LANDS—

Particulars in actions for flooding, 206.
Execution against, 394.

LEAVE—

Affidavit for, to sue in adjoining division, 210.
Notice of, to dispute claim (under section 112), 283.
Schedule to be indorsed on affidavit for, to sue in adjoining division, 211.
To defend, order for, 317, 318.

LINE FENCES—

Forms on appeal under Act respecting (*see* Appeals), 306.

M

MAINTENANCE—

Claim for, 304.
Order for, 304.
Summons for (under *Industrial Schools Act*), 304.

MANDAMUS—

Affidavit on motion for, 345.
Notice of motion for, 346.

MARRIED WOMEN—

Execution against, 262.
Judgment against, 240.

MASTER AND SERVANT—

Demand of jury under Act respecting, 303.
Execution on appeal under Act respecting, 262.
Forms on appeal under Act respecting, 302.

MEMORANDUM—

On summons in garnishee proceedings, 234, 236, 237, Vol. I., p. 308.
in wages cases, Vol. I., p. 258.
in claim for board or lodging, Vol. I., p. 258.
To be put on all summonses, 224.

MINUTES OF JUDGMENT (*see* Judgment)—
For costs ordered to be paid after confession, 337.
In procedure book, 238-248.
In garnishee proceedings, 247.
In interpleader (*see* Interpleader), 271, 273.
In case judgment altered on application for new trial, 275.
In cases of cross-judgments, 292, 293.
To be read to parties when judgment postponed, 241.

MONEY UNCLAIMED—
Verified list of, 291.

MONEY—
Payment of, into court (*see* Payment into Court), 281, 282.

N

NAMES AND RESIDENCES OF PLAINTIFF—
Demand of, 286.
Declaration in reply, 286.
Notice of application for order for, 286.
Order for, 287.

NEXT FRIEND—
Undertaking, to be responsible for costs, 280.

NEW PARTY—
Order to continue proceedings for or against, 289, 325.

NEW TRIAL—
Application for, 314.
Entry in procedure book of order for, 275.
Notice of, 283.
Order for, 274.
for different judgment instead of, 274.

NON-SUIT—
Judgment of, 239.

NOTICES OF DEFENCE (*see* Defences), 207.

NOTICES—
By clerk, of trial by jury, 283.
of new trial, 283.
on ordinary summons, 223, 224, 225.
on garnishee summons, 234, 235, Vol. I., p. 258.
of return of execution (under section 218), 283.
of acceptance of money paid into court, 282.

NOTICES—*Continued.*

By clerk, of proceedings being transferred, 283.
on summons in action against executors, etc., 224.
to plaintiff of various defences, 281.
to be endorsed on interlocutory injunction, 341.
to either party generally, 284.
to parties added as defendants, 328.
to parties of delivery of postponed judgment, 284.
to defendant of assignment of title to judgment, 332.
By parties, by defendant to third party, 330.
disputing jurisdiction, 327.
in counterclaim, 285.
of set-off, 207.
of defence (*see* Defences), 207.
of leave to defend, 283.
of counterclaim, 208.
of withdrawal of defence, 284.
of discontinuance, 285.
of preparation of plan of distribution among execution creditors, 333.
of action against bailiff, 334.
of intention to give copies of documents in evidence (under *Evidence Act*), 329.
of motion for mandamus, certiorari, or prohibition, 346.
of application for discharge from custody, 342.
of application for interlocutory injunction, 340.
of payment into court in replevin, 326.
of application for approval on appeal bond, 327.
of appeal and grounds thereof, 328.
of appeal under *Ditches and Watercourses Act*, 298.
Master and Servant Act, 302.
Tax on Dogs Act, 302.
of motion for immediate judgment, 327.
of application for examination of witness *de bene esse*, 273.
order for names, etc., of plaintiff's firm, 286.
to produce at trial, 330.
for inspection, 328-331.
to clerk of change of plaintiff's title to judgment, 285.
to creditor of claim to goods taken in execution, 326.
General form of, in garnishee proceedings, 322.
heading and conclusion of, 286.
Of sale by bailiff, 295.

NUISANCE—

Damage for, particulars of claim, 308.

O

OATHS (*see* Affidavits and Oaths), 209.
Of appraiser in attachment proceedings, 295.
To witness who swears on the Bible, 219.
by uplifted hand, 219.
To a Jew, 219.
To a Quaker, 219.
To a Mennonist or Tunker, etc., 219.
To an interpreter, 219.
To a jury called by parties, 219.
judge, 219.
To a defendant on judgment summons, 219.
To officer conducting jury out of court, 219.
To officer when jury retire to consider verdict, 220.
To a deponent or declarant making affidavit, 220.
To a witness by arbitrator or umpire, 220.
Where a witness objects to swear on religious grounds, 219.

OBJECTION—

To jurisdiction to try counterclaim, notice of, 285.

ORDER BOOK—

Form of, 198.

ORDERS (*see* Summonses)—

Appointing guardian for infant defendant, 322.
Affidavit for, for writ of replevin, 229.
for immediate judgment, 309.
for, to examine a sick, aged, or infirm witness, 312.
on, to garnish debt, 221.
for, to discharge portion of debt from claim of primary creditor, 313.
Changing place of trial, 289.
plan of distribution among execution creditors, 324.
Discharging moneys from claim of primary creditor, 323.
Entry in procedure book that judgment for or against executor be revived, 244.
of, in procedure book on judge's order for judgment instead of new trial, 275.
of partial satisfaction on set-off of cross-judgments, 293.
Execution on appeal under *Master and Servant Act*, 262.
For judgment without plaintiff filing note sued on, 242.
immediate judgment, 239.
new trial, 274.
new judgment on application for new trial, 274.
statement of names, etc., of plaintiff's firm, 287.

ORDERS—*Continued.*

For maintenance (under *Industrial Schools Act*), 304.
imposition of fine for contempt, 241.
non-attendance of juror, 242.
renewal of summons, 322.
sale of perishable goods, 324.
receiver, 325.
security for costs, 326.
substitutional service, 315.
examination of defendant and production of books, etc., 317.
leave to defend unconditionally, 317.
as to part on payment into court, and unconditionally as to residue, 317.
judgment for part of claim, 318.
leave to defend on payment into court, 318.
commission for examination of witness out of jurisdiction, 318.
examination of sick, aged, or infirm witness, 321.
committal for breach of an injunction order, 341.
certiorari, 347.
prohibition, 347.
discharge of prisoner from custody, 343.
General form of, in garnishee proceeding, 222.
headings and conclusion of, 286.
Judge's attaching order in garnishee proceedings, 236.
Of reference, 275.
containing special clauses, 276.
On party to pay clerk's costs, 250.
On judgment summons altering original judgment, 323.
Postponing execution or judgment, 244.
Staying proceedings, 325.
Staying proceedings with a view to appeal, 322.
To suspend an order, judgment, or execution, 243.
To continue proceedings for or against a new party, 289, 325.
proceed after death of plaintiff after judgment, 289.
proceed after change of interest of plaintiff or defendant, 290.
set-off cross-judgments, 293.
Transferring cause when entered in wrong court, 316.

P

PARTICULARS—

Of claim against clerk or bailiff and sureties, 206.
for damages for flooding land, 206.
in replevin, 230.
in suit in division nearest defendant's residence, 206.

PARTICULARS—*Continued.*

Of claim in interpleader, 270, 307.
in detinue, 205.
in contract, 202.
in actions of tort, 205.
on a guaranty, 203.
promissory note, 203.
bill of exchange, 204.
bond, 204.
covenant, 204.
Of plaintiff's claim on ordinary summons, 307.
Of defence (*see* Defences), 207.
Of set-off (*see* Set-off), 207.
Of counterclaim (*see* Counterclaim), 208.
Of plaintiff's demand for damages for nuisance, or for injunction, 308.

PARTIES—

Notice to clerk of change of interest before judgment, 285.
Order to continue proceedings for or against a new party, 289.
proceed after death of plaintiff after judgment, 289.
proceed after change of interest after judgment, 290.

PAY LIST—

Of jurors, 292.

PAYMENT INTO COURT—

Acceptance of money paid in, 282.
Notice by clerk to plaintiff of plea of and of tender, 281.
Notice of, in replevin, 326.

PERISHABLE PROPERTY—

Bond on sale of, in attachment, 278.
Order for sale of, 324.

PLACE OF TRIAL—

Affidavit for change of, 220.
Notices on summons for change of, 223.
Order for change of, 289.
Summons for change of, 288.

PLEA—

Of tender, 333.
Of payment into court, 334.

PRIMARY CREDITOR—

Affidavit for order to discharge portion of debt from claim of, 313.
Order discharging money from claim of, 323.

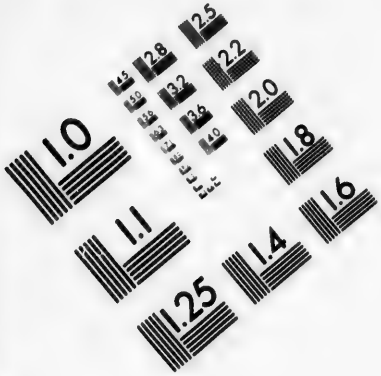
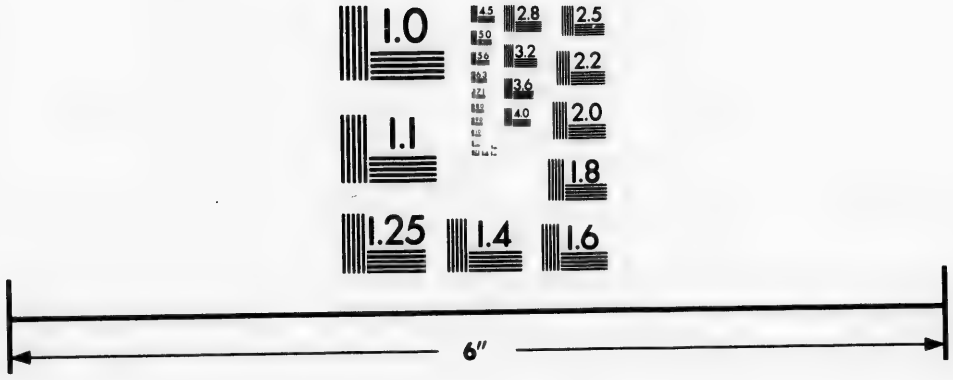
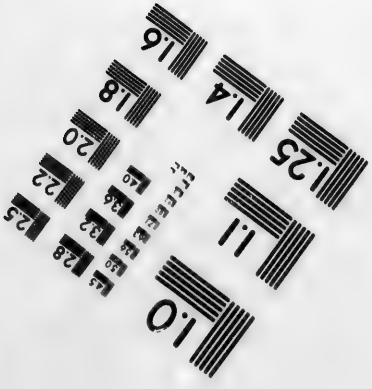
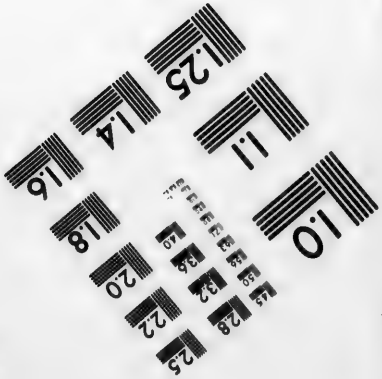




IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

PRISONER—
Creditor's request for discharge of, 293, 338.
Certificate for discharge of, 294.
Warrant for discharge of, 294.

PROCEDURE BOOK—
Certificate of entry in, 287.
Entry in, of new judgment on application for new trial, 275.
of partial satisfaction on set-off of cross-judgments, 293.
(under *Creditors' Relief Act*), 242.
Foreign, 394.
Form of, 193, 393.
Minutes of judgment in (*see* Judgment), 238-248.

PROCESS BOOK—
Bailiff's, 200.

PROMISSORY NOTE—
Particulars of claim on, 203.
Order for judgment in action on, without plaintiff filing, 242.

PROCEEDINGS—
Notice of transfer of, 283.
Order staying, with a view to appeal, 322.
to continue, against new party, 289, 325.
to continue, after change of interest, 290.
to continue, after death of plaintiff, 289.
staying, 325.

POSTPONED JUDGMENT—
Clerk's notice of delivery of, 284.
Entry of, when execution postponed by consent beyond fifty days, 243.
Minute of, to be read to parties, 241.

POSTPONING EXECUTION—
Order, 244.

PROHIBITION—
Affidavit for, 344.
Notice of motion for, 346.
Order for, 347.

PRODUCE—
Notice to, for inspection, 328, 331.

PROSECUTION—
Dismissal of action for want of, 239.

PLAN OF DISTRIBUTION—
Notice of preparation of, among execution creditors, 333.
Order changing same, 324.

Q

QUAKERS—
Affirmations by, and jurat thereto, 220.

R

REFERENCE—
Appointment of third arbitrator, 275.
meeting on, 275.
Enlargement to be endorsed, 276.
Order of, 275.
containing special clauses, 276.

REMOVING DEBTOR—(*see* Absconding Debtor, Attachment).

RECEIVER—
Order for, 325.

RENEWAL OF SUMMONS—
Order for, 322.

RENT—
Claim of (under section 269), 269.
Judgment for defendant in replevin for, 249.
Return when levied by bailiff, 296.

REPLEVIN—
Affidavit for order for, 229.
Assignment of, bond, 231.
Bond in, 231.
Bailiff's return to writ, 232.
Claim in, 230.
Executions in (*see* Execution), 255.
Inventory of goods replevied, 232.
Judgments in, 249.
in favor of plaintiff, 249.
in favor of defendant for rent, 249.
in favor of defendant in replevin of cattle, damage feasant, 249.
in favor of defendant when not for rent, or damage feasant, 249.
Memorandum to be put on summons, 223.
Notice of payment into court in, 326.
Summons in, 230.
Warning in, 231.
Writ in reprisal (capias in withernam), 233.

REPRISAL—
Writ in (capias in withernam), 233.

REQUEST—
By creditor for release of prisoner, 293, 338.

RESIDENCE—
Demand for particulars, etc., of plaintiff's firm, 286.
Declaration in reply to same, 286.
Notice of application for order for same, 286.
Order for particulars, etc., 287.

RESTORATION OF GOODS—
Bond on, in attachment proceedings, 277.

RETURN—
Bailiff's, to writ of replevin, 232.
to clerk at each court, 297.
to executions (*see* Executions), 296.
Judge's, to certiorari, 290.
Notice of, to execution, 283.

REVIVAL OF JUDGMENT—
Affidavits for, 216, 217.

S

SALE OF GOODS—
Bond on sale of perishable goods, 278.
Notice of, by bailiff, 295.

SATISFACTION—
Entry of, where cross-judgment set off, 293.

SCHEDULE—
To be endorsed on affidavit for leave to sue in an adjoining division, 211.

SCHOOLS—
Act respecting Industrial Schools, proceedings for maintenance under, 304.

SECURITY FOR COSTS—
Bond for (when plaintiff out of Ontario), 278.
Order for, 326.

SEIZURE—
Of perishable goods, bond on, 278.

SERVICE—
Affidavit of service of summons, 213.
of service of summons on absconding debtor, 214.
of service of summons on agent of foreign corporation, firm, or individual, 237.
for order for substitutional service, 309.
Appointment of solicitor or agent for, 336.
Order for substitutional service, 315.

SET-OFF—
Execution on judgment for balance of, 252.
Judgment for balance of, 240.
on, where part satisfied, 239.
Notice of, 207.
Of cross-judgments, application for, 292.
order for, 293.
entry of satisfaction on, 293.

SHOW CAUSE (*see* Judgment Summons)—
Summons to, after default, 226.
Warrant of commitment under, 265, 266.

SICK, AGED, OR INFIRM WITNESS—
Notice of application to examine, 273.
Order for examination of, 274.

SIGNATURE—
Affidavit of, to admission of claim, 295.

SPEEDY JUDGMENT—
Affidavit on application for, 309.
Notice of motion for, 327.
Minute of, 239.
Order for, 238.

STYLE OF CAUSE—
In affidavits and other documents, 209, 221, 286.

SUBPŒNA (*see* Witnesses)—
To jurors, 228.
To witnesses, 228.

SUGGESTION—
Of devastavit in action against executor, 224.

SUMMONSES—
Affidavit of service of, 213.
on absconding debtor, 214.
on agent of foreign corporation, firm, or individual, 237.
on partnership firm, 311.
For assault on bailiff in discharge of duty, 315.
For maintenance under *Industrial Schools Act*, 304.
General form of, 222.
In suit by clerk for fees (under section 55), 227.
In replevin, 230.
In interpleader, 269.
Memo. on, in wages cases, 234.
in actions of tort, 224.

SUMMONSES—*Continued.*

Notices and warnings on, 223, 224, 225, 234, 235.
Notice endorsed on, to change place of trial, 224.
Ordinary, 224.
Order for renewal of, 322.
Special, 222.
To change place of trial, 288.
executor, etc., when allegation that assets have come to his hands since judgment, 224.
defendant after judgment, 225.
default, 226.
jurors, 228.
witnesses, 228.
on arbitration, 228.
garnishee and primary debtor after judgment, 233.
garnishee and primary debtor before judgment, 235.
clerk of municipality, 316.
Warning where suit brought for beneficial plaintiff, 225.
on summons to primary debtor, 235.
Where third party claims money garnished, 248.

SUBSTITUTIONAL SERVICE—

Order for, 315.

SUPERSEDEAS—

Bond on, to warrant of attachment, 277.

SURETIES—

Affidavit of justification of in appeal to Division Court under *Master and Servant Act*, 303.
Affidavit of justification of in appeal to High Court, 313.
Particulars of claim in actions against, 206.

SUSPENSION—

Of order, judgment, or execution, order for, 243.

T

TARIFF OF FEES—

Of appraiser, 191.
Of bailiff, 188.
Of clerk, 185.
Of witness, 191.

TAX ON DOGS ACT—

Forms of appeal under, 302.

TENDER—
Notice of plea of, 281.
Plea of, 333.

TESTATOR—
Execution against goods of, 254.

THIRD PARTY—
Notice by defendant to, 330.

TORT—
Memo. on summons in actions of, 224.
Particulars of claim in actions of, 205.

TRANSFERRING PROCEEDINGS—
Notice to parties by clerk of new division, 283.
Order, 316.

TRANSCRIPT—
Affidavit for further proceedings after transcript, 218, 313.
Execution on, 253.
Of judgment on ordinary summons from one division to another, 268.
To County Court of judgment on special summons, 268.
To another Division Court of judgment on special summons, 267.

TRIAL—
Affidavit on application for change of venue, 220.
By jury, notice of, 283.
demand of (under *Master and Servant Act*), 303.
New, notice of, 283.
application for, 314.
Of appeal (under *Ditches and Watercourses Act*), 298.
Order for change of venue, 289.
Summons for change of venue, 288.

U

UNCLAIMED MONEY IN COURT—
Form of verified list of, 291.

UNDERTAKING—
By next friend, to be responsible for costs, 280.

V

VENDITIONI EXPONAS—
Warrant of, 261.

VENUE (*see* Change of Place of Trial)—
Affidavit on application to change, 220.
Notice on summons as to, 223.
Order for change of, 289.
Summons for change of, 288.

W

WARNINGS ON SUMMONSES (*see* Summonses)—
Generally, 223, 224, 225.
In replevin, 231.
In garnishee proceedings, 234, 235.

WARRANTS—
Affidavit for, to bring up a prisoner required as a witness, 314.
For discharge of prisoner, 338.
Of commitment on judgment summons on default of appearance, 265.
after examination, 265.
for contempt in open court, 266.
for various reasons, 339.
On attachment, 342.
To levy fine against witness for various contempts, 263.

WITHDRAWAL OF DEFENCE—
Notice of, 284.

WITHERNAM—
Writ of capias in (*see* Replevin), 233.

WITNESS FEES—
Tariff of, 191.

WITNESSES—
Affidavit of disbursements to, 218.
Notice of application for examination of sick, aged, or infirm witness, 273
Oaths to be administered to, 219, 220.
Subpœnas to, 228.
Warrant to levy fine against, on refusal to give evidence, 263.
on refusal to be sworn, 263.
for disobedience to subpœna, 263.

WRITS (*see* Summonses)—
Affidavit for order for writ of replevin, 229.
Of replevin, 230.
Of withernam, 233.

INDEX TO VOLUME II.

A

ABANDONMENT—

Defendant may file consent to, 74.
Of claim against some defendants to obtain judgment against others, 69.
Of counterclaim, 74.
Of interest to give jurisdiction unnecessary, 376.
Of part exceeding jurisdiction—result if not done, 9.
when and how done, 9.
When defence or counterclaim involves matter beyond jurisdiction, 68.

ABATEMENT—

Court not held when appointed no cause of, 131.
Death, marriage, or insolvency no cause of, 117.
Death of parties, procedure subsequent, 119, 121.
None when court not held on day appointed, 131.
Procedure subsequent to death of party, etc., 119.
Transcript not to issue after, 78.

ABODE—

Place of, to be stated in claim, 7.
Place of, to be left with clerk, 124.

ABSCONDING DEBTOR—

Clerk's duties before issuing attachment, 17.
Costs in attachment, 19.
Disposal and distribution of proceeds of execution, 17, 18, 19.
Each attaching creditor may enter defence, set-off, or counterclaim, 16.
Only one execution against, 17.
Property seizable under attachment, 17.
Statement of bailiff's fees to be given on return to warrant, 103.
When property may be sold as perishable, 17.
Where several attachments issued, 16, 17.
When trial of action to be heard, 16.

ABSENT PARTIES—

May be added at hearing, 119.

ACCEPTANCE—

Money paid into court in garnishment, 47.

ACCORD AND SATISFACTION—

Cases as to, 133.
Party making, may require entry of, 132.

ACCOUNT—

Copy of, to be served, 12.

ACT—

Meaning of word, 2.

ACTION—

Against corporations, firms, or individuals out of province, 13.
Against officers and sureties, particulars in, 9.
Against sureties to be commenced within ten years, 377, 400.
Attachment, trial, 16.
By and against executors and administrators (*see* Executors), 54.
By whom leave may be granted, 13.
By Crown on covenant of official for misconduct, 399.
Commencement of, 9, 10.
Discontinuance of, 130, 131.
Discontinuance in replevin by delivery up of bond, 40.
Fees when claim not more than $10.00, 385.
For debt or money demand, how commenced, 10.
For tort, how commenced, 10.
Infant bringing, to have next friend, 122.
Jurisdiction given in personal action under $100.00, 375.
Leave to bring in division other than that where defendant resides, 11.
May be brought against defendant residing out of province, 387, 388.
Not abated by death, marriage, or insolvency, 117.
Notices and warnings to be given, 11.
On replevin bond (*see* Replevin), 32.
On securities, etc., seized by bailiff, how commenced, 10.
Paying money into court in, 128.
Pending in other court for same cause, 148.
Personal, how commenced, 10.
Purchase of interest by clerk or bailiff prohibited, 105.
Recovery of penalty for contravention of a statute, 399.
Settlement of, to be made with clerk, 106.
not to be made with bailiff, 106.
Transferred, duties of clerk of new division, 90.
Wages, 404.
of infant, 122, 139.
before city police magistrate, 406.
of woodman, practice, 411, *et seq.*
When defendants have separate interests, 12.
Where cause of, arises, 117.

ADDING PARTIES—(*see* Amendment and Change of Parties), 110, *et seq.*

Application to add party, when to be made, 112.
Procedure book to show change, 121.
Substitution of defendant, 119.
When defendant added, order to be drawn up, 116.
When stranger appears and admits liability, 112.

ADDRESS OF PARTIES—

To be left with clerk, 7, 124.

ADJACENT DIVISION—

Leave to sue in, 10.

ADJOINING DIVISION—

Affidavit for, 11.
Leave to sue in, 11, 13.

ADJOURNMENT—

Absence of a material witness ground for, 149.
Action in other court pending by failure to pronounce at time stated, 148.
Court not held at time appointed, 132.
For further particulars, 7.
For judgment, action not concluded by, 147.
Neither party appearing at trial, 154.
Notice to parties in such cases, 154.
Of judgment—trial not concluded by failure to pronounce at time stated, 147.
Order for unnecessary 149.
Where practice not complied with, 123, 129.
Where party dies and person entitled to proceed fails to appear, 121.

ADMINISTRATORS—(*see* Executors), 54, *et seq.*

ADMISSION—(*see* Confession).

Cost of proceedings after, 63.
Notice of admission of part of claim, counterclaim, or set-off, 63.
Of part of claim, proceedings on, 61, 62.
When part admitted plaintiff may proceed for, without prejudicing right to balance, 376.

ADVERTISEMENTS FOR CREDITORS—

By executors and administrators, 55, 60.

AFFIDAVIT—

Application for new trial, 150.
Attachment of logs or timber to satisfy woodman's lien, 413.

AFFIDAVIT—*Continued*—

Before whom sworn, 142.
By person illiterate or blind, 143.
Examination of judgment debtor, 107.
For attachment, clerk's duty as to, 17.
For garnishee order, requisites of, 41, 42.
For judgment summons, 107.
For leave to issue execution in certain cases, 80, 81.
For leave to sue in adjacent division, 11, 13.
For replevin, requisites of, 29, 30.
Foreign, may be unsigned, 142.
Further proceedings after issue of *fi. fa.* lands, 380.
General heading and conclusion of, 144.
How to be drawn, 142.
Justification of sureties, before whom sworn, 400.
Of disbursements to witnesses, 158.
Of mileage, to be made by bailiff, 90.
Of service (*see* Service) on defendant out of province, 389, 390.
To be signed by deponent and entitled in court and cause, 142.
To state sources of knowledge, etc., 143.
To have no alteration in jurat, 144.
When made by two or more deponents, 143.

AFFIDAVITS AND OATHS—

Requisites of, 141-144.
(*See* Affidavit.)

AFFIRMATIONS—

Instead of oath, 144.

AFFIRMED AND DECLARED—

Included in word sworn, 2.

AGENT—

Clerks and bailiffs not to act as, 105.
Entering suit entitled to be paid moneys recovered, 93, 94.
Entering suit not entitled to counsel fee unless barrister or solicitor, 156.
Meaning of, in case of railway company, 4.
telegraph company, 4.
express company, 4.
Of foreign corporation, firm, or individual, service of summons on, 13.

AGREEMENT—

Not to appeal, 140, 165.

ALIAS OR PLURIES PROCESS—

How to be issued, 10.

ALIAS SUMMONS—

To be dated on day of issue, 10.

AMENDMENT OF PARTICULARS, 7, 8.

(*See* Amendment and Change of Parties.)

AMENDMENT AND CHANGE OF PARTIES, 110, *et seq.*

Action not to abate by marriage, death, or insolvency, 117.
Adding plaintiff, 110, 114, 115.
defendant, 111.
third party, 119.
Application for, when and how made, 112.
Application by person under disability to discharge order adding him, 120.
Change of parties before judgment, 118.
Change of parties or new capacity by assignment or other transmission of interest, 119.
Consent of plaintiff to change of defendant, 113.
Consent of new plaintiff necessary, 110.
Effect of statutes of limitations on substituted defendant, 113.
Ex parte, if defendant not served, 111.
Form of title after change of parties, 121.
Incorrect name of plaintiff given, 115.
Incorrect name of defendant given, 116.
Judge to have full powers as to, 114.
Material necessary on application, 110.
May be made by judge at any time of defects, etc., in proceedings, 123, 124.
No proceeding to be defeated by formal objection, 123.
Non-compliance with rules not to void proceedings, 123.
Notice of order for change of parties or new capacity by assignment or other transmission of interest, 120.
Notice of change of interest, 117, 118.
On misjoinder or nonjoinder of parties, 114.
Order necessary generally, 117.
Orders to be drawn up, 116.
Powers of judge as to amending names, 7, 8, 114.
Procedure book to show change and title of suit to be altered, 121.
Service of order, 120, 121.
Substitution of defendant before judgment, 119.
Summons to added defendant, 116.
When next friend sought to be struck out or added he must consent, 114.
When party dies and person entitled to continue fails to appear, 121.
Where action brought by wrong person as plaintiff, 110.
Where defendant improperly added to give jurisdiction, 112.

AMENDMENT AND CHANGE OF PARTIES—*Continued*—

Where less number of plaintiffs than law requires, 115.
Where made at trial, no order necessary, 111.
Where name of husband or wife improperly joined or omitted, 116.
Where party brought in does not appear at trial, 117.
Where plaintiff sues in his own name instead of representative character, and *vice versa*, 113.
Where several defendants, and all not served, 111.
Where special summons issued, instead of ordinary, and *vice versa*, 15.
Where stranger appears at trial and admits liability, 112.
Where wrong party sued, 111.

AMENDMENTS TO DIVISION COURTS ACTS, 375.

ANIMALS—

Replevin after seizure when found trespassing, 30, 41.

APPEALS—

Against assessment, 176.
Agreement not to, 140, 166.
Bond under *Master and Servant Act*, 174.
Enforcement of judgment on, 167.
Forms to be used on, 131.
From Division Courts, practice as to, 166.
Judgment of Court of Appeal may be filed, 166.
Magistrate's decision as to maintenance of wives deserted by their husbands, 411.
School cases, costs, 409.
judge appealed from to certify proceedings, 409.
Stay of proceedings in judicial districts pending appeal, 140.
Stipendiary magistrates' decisions in judicial districts, 140.
Under *Act to impose Tax on Dogs*, 169.
Under *Assessment Act*, 171.
Under *Ditches and Watercourses Act*, 179.
Under *High Schools Act*, 410.
Under *Line Fences Act*, 176.
Under *Public Schools Act*, 408.
Under *Separate Schools Act*, 407.
When judgment ordered to be entered on, 167.
When new trial ordered on, 166.

APPLICATION—

Clerk's duties as to, 130.
For costs, when and how made, 163.
For detention, preservation, inspection, etc., of subject of action, 133.
For garnishee order, 41.
For garnishee summons under section 195, 48.

APPLICATION—*Continued*—
For interpleader, 19.
For judgment summons, 107.
For leave to dispute plaintiff's claim, 147.
For new trial (*see* New Trial), 96, 150-153.
For speedy judgment, 75.
May be made at court, 130.
Stranger interested in debts garnished, 42.
Summary, how to be made, 129.
To set aside or stay proceedings, how made, 130.
To set aside proceedings for irregularity, 123.

APPRAISERS—
Fees of, 192.

APPRAISEMENT—
Goods seized in interpleader, 27.

ARBITRATION—
Judgment on award in, 73.
Judicial districts, 139.
powers of stipendiary magistrate, 140.

ARREST—
After payment to judgment creditor, 109.
Discharge from, on payment of judgment, 109.
Discharge from, at request of judgment creditor, 109.
Of judgment debtor, 108.

ASSESSMENT ACT—
Appeals under, 171.

ASSESSORS—
Under *Workmen's Compensation for Injuries Act*, 414.

ASSETS—
Insufficient to pay all debts of deceased, procedure, 55.
In futuro, judgment against, 57.
costs, 58.
execution against, 80.

ASSIGNMENT—
or other transmission of interest, proceedings on, 117-121.

ATTACHMENT—
Affidavit for, 41.
Affidavits for, 413.
Application to set aside, 411.
Of debts (*see* Garnishment).
Of logs or timber for woodman's wages, 411.

ATTACHMENT BOOK (Debt)—

Entries of orders and summonses, 49.
To be kept by clerk, 83.

ATTACHMENT OF GOODS (*see* Absconding Debtor), 16, 19.

Clerk's and bailiff's duties in respect of, 17.
Costs in, 19.
Distribution of moneys made, 17, 18, 19.
Trial, if defendant not served personally, 16.
When hearing to take place, 16.

AWARD—

Ditches and Watercourses Act, appeal from, 179.
Judgment and execution on, 73.
Judgment in judicial districts, 139.
Line Fences Act, amended on appeal, 178.
appeal from, 176.
enforcement of, 176.
Mechanics' Lien Act, certificate may be entered in Division Court, 403.
To be entered by clerk forthwith, 73.

B

BAILIFF—

Application for interpleader by (*see* Interpleader), 19-27.
Definition of, 3.

Duties of—

Action by, under section 229, warning to defendant, 10.
Appeals to judge respecting fees, 164, 165.
"Bailiff's Process Book" to be open to judge and clerk, 101.
Claimant in interpleader may pay value of goods to, 24.
Covenant of, to be renewed, 376.
Endorse fees on warrant of commitment, 108.
Fees of, to be deposited in certain cases, 164.
Forfeiture of office for, 106.
In attachment proceedings, 17.
In replevin (*see* Replevin), 31, 36.
Make return to clerk at every court, 104.
May discharge judgment debtor from arrest in certain cases, 109.
Money received by, for fees, to be entered in procedure book, 87.
Moneys returned by, to be entered in procedure book, 88.
Not to act as agent of parties, 106.
Not to delay or hinder proceedings, 105.
Not to purchase or have interest in suit, 105.
Not to withhold suitors' moneys on any pretence, 93.
Not to sacrifice property if unable to realize reasonable price, 101.

BAILIFF—*Duties of—Continued*—

Not to take money from defendant or settle suit, 106.
On executing warrant of commitment, 102.
On receiving execution, 103.
On receiving money, to pay same forthwith to clerk, 102.
On receiving summons for service, 100.
Other duties at such sittings, 100.
Penalty for delaying or hindering proceedings, 105.
Penalty for non-compliance with rule, 100.
Schedule of fees, 188.
Service of papers must be made by, 75.
To attend sittings of court, 100.
To deliver return on oath to clerk at every sittings, 100.
To give suitors information as to contents of "Bailiff's Process Book," 101.
To give statement of fees, etc., on returns to executions, writs of replevin, and attachments, 103.
To keep cash book, 103.
To keep "Bailiff's Process Book," 100.
To make yearly return to inspector, 85.
To return execution within 30 days, 101.
To report cause for not making such return, 101.
To return summons to clerk if not served in time, 103.
To serve summonses in foreign divisions and make return forthwith under rule 183, 88.
When to serve summons, 11, 104.

BENEFICIAL PLAINTIFF—

In action under section 229, warning to defendant, 10.

BILL OF COSTS (*see* Costs)—

To be made up by clerk in detail, 97.

BOARD OF COUNTY JUDGES—

Inspector to be member of, 377.
When meetings of, to be held, 141.

BOND—

In appeal under *Master and Servant Act*, 174.
In Replevin—
Assignment of, 32.
Bailiff to take, 32, 34.
Proceedings in actions on, 32.
When delivered up to be cancelled, action to be discontinued, 40.
(*See* Replevin), 28-40.
In Garnishee Proceedings—
Breach of, 32.
For repayment by primary creditor, 48.
May be assigned if broken, 49.

BOND—*Continued*—

In Attachment—

On sale of perishable goods (*see* Index of Forms).

Of Clerks and Bailiffs—

Limitation of action on, 377, 400.
To enure for benefit of Crown, 399.
When required to be renewed periodically, receipts to be filed, 376.

BOOKS—

Forms of, to be used, 125.
Rules as to entries in, 84.
To be kept by clerks (*see* Clerks), 83, 86.
bailiff (*see* Bailiff), 100, 103.

BOUNDARIES—

Of Division Courts, 349.

C

CASES TRANSFERRED—

Proceedings in, 99.

CASH BOOK—

To be kept by clerk, 83.
bailiff, 103.

CAUSE—

Defined, 6.

CAUSE OF ACTION—

(*See* Claim), 6.

CAUTION—

To party sued on chose in action under section 229, 10.

CERTIFICATE—

Of award in mechanics' liens, 403.
Of judge in school appeals, 409.

CERTIORARI—

Duties of clerk on, 99.
Motion for, 391.
Order for, 99.
Proceedings on transfer of cases to High Court, 99.
What cases may be transferred, 99.
When title to land, validity of devise, etc., in question, cases to be removed to High Court, 390.
Writ of, abolished, 391.

CESTUI QUE TRUST—

Need not be co-plaintiff with trustee, 60.

CHANGE OF PARTIES (*see* Amendment), 110.

Action not defeated by nonjoinder or misjoinder of parties, 114.
Application to discharge order for, 120.
Before judgment, 118.
Judge may discharge or vary order, 120.
Notice to defendant, 118.
On change of interest or new capacity, 119.
notice of order therefor, 11 .
Parties may be added if omitted in the first instance, 115.
Procedure subsequent to order, 121.
Procedure book to show change and altered title of suit, 121.
Revival of judgment after death of plaintiff, 81.
Service of order, 120.
Substitution of a party, 118, 119.
When action brought in wrong name as plaintiff, 110.
When application for to be made, 112.
When husband or wife improperly added or omitted, 116.
When made at trial, no order necessary, 111.
When party brought in does not appear, 117.
When party defendant added to give jurisdiction, 112.
When stranger appears and admits liability, 112.
When suit by or against person in representative character instead of own name, and *vice versa*, 113.
When wrong party sued, 111.
Where defendant added or substituted, order to be drawn up, 116.
Where party dies and person entitled to proceed fails to appear, 121.
Where plaintiff's name, etc., insufficient or incorrect, 115.
Where defendant's name, etc., insufficient or incorrect, 116.
Where several defendants and all not served, 111.

CHANGE OF PLACE OF TRIAL—

In interpleader, 23.
Notice on summons as to, 14.
Proceedings in transferred cases, 99.

CHANGE OF TITLE—

Notice of, 118.

CHARACTER OF PARTIES—

In suit by trustees is to be stated in claim, 60.

CHOSE IN ACTION—

When seized, how sued on, 10.

CLAIM AND PARTICULARS—
Against married women (*see* Married Women), 145, 146.
Against officers and sureties, 9.
Copy to be attached to summons, 12.
Defined, 3.
For wages, 404.
In interpleader (*see* Interpleader), 19, 20, 21, 22.
In replevin (*see* Replevin), 29, 32.
In suits against executors, etc., 60, 100.
Judgment for part admitted, 376.
not to prejudice balance, 376.
May be amended, 7, 8.
Notice of proceeding for remainder of, 94, 126.
On mechanics' lien, 402, 403.
On note, does not require copy of note, 132.
Other requisites of, 132.
To be annexed to and form part of summons, 87.
To be numbered by clerk in order of receipt, 86.
To show standing of suit, 86.
What to contain, 8.
When defendant sued in nearest division, 8.
Where defendant resides out of province, 387.
Where excess abandoned, 9.
CLEAR DAYS—
Meaning of, 4, 6.
CLERK—
Covenant of, 376.
action on, 377.
Defined
Duties of—
As to issue of special summons, 87.
As to ordinary summons, 87.
As to service of summonses from other divisions, 88.
Books to be kept by, 83.
Has no right to deal with case after transcript, 77.
If return incorrect, to notify judge, 98.
In interpleader (*see* Interpleader), 19, 27.
In transferred cases under section 87, 90, 91.
Lieutenant-Governor may designate place where office to be kept, 83, 384.
May send papers to be served on application for new trial by mail, 96.
Memo. to be endorsed on bailiff's return, 105.
Must sign notice on summons as to change of venue, 14.
Not to receive money on foreign summonses, 88.
Not to take money from defendant or settle suit except in actions in his own court, 106.

CLERK—*Duties of—Continued—*

Not to act as agent of parties, 106.
Not to purchase or hold interest in suit, 165.
Not to delay or hinder suit, 105.
Not to withhold suitors' moneys under any pretence, 93.
Notice of change of title to judgment, 118.
Notify judge of ditches and watercourses appeals, 179.
Notify judge of line fence appeals, 176.
Notify justices of appeal under *Master and Servant Act*, 175.
Of cities, to keep separate book of fees and disbursements, 86.
On issuing attachment (*see* Absconding Debtor), 17.
On plea of tender and payment into court, 95.
On postponed judgment under section 144, 91.
On receiving bailiff's return, 105.
Renewal of warrant of commitment, 109.
Returns under sections 103 and 104 to be made by, 73.
To annex copy of claim to summons, 87.
To answer promptly all reasonable inquiries, 88.
To certify to clerk of municipality result of ditches and watercourses appeals, 181.
line fences appeals, 178.
To enter change of parties in procedure book, 111.
To enter every judgment or order in procedure book, 73.
To enter transcript in procedure book, 77.
To enter moneys received by bailiff, 87.
To file summons when entering judgment, 91.
To forward evidence taken in writing on application for new trial, 96.
To forward papers for service in other divisions, 88.
To issue alias or pluries summons when necessary, 10.
To issue new process on execution returned "property on hand for want of buyers," 101.
To issue process under seal, 9.
To issue summons at request of bailiff, 23.
To keep all papers together in summons, 87.
To lay bailiff's return before judge at every court, 98.
Such return to be filed and endorsed as specified, 98.
To make half-yearly returns to inspector, 97.
Transmit same to Provincial Treasurer, 97.
To make out bill of costs in detail, 97.
To make return annually to Lieutenant-Governor, 86.
To make settlement with defendant, 106.
To notify defendant of judgment by default, 72.
To notify defendant of plaintiff's intention to proceed for balance, 94.
To notify parties in garnishee proceedings of all matters of which they should be informed, 95.

CLERK—*Duties of—Continued—*

To notify parties of adjournment of case where neither party appears, 154.
To notify parties of receipt of money, 93.
To notify plaintiff of defence or admission as to part of claim, 62.
To notify plaintiff of dispute of claim, confession, or of no defence, 92.
To number every claim as received, 86.
To pay bailiff proper taxable fees on execution duly returned, 102.
To pay moneys as directed by parties, 128.
To pay money made to solicitor or agent entering suit or making deposit, 93, 94.
To pay Provincial Treasurer proportion of fees he is not entitled to retain, 97.
To prepare trial lists, 89, 90.
Requisites of same, 89, 90.
To register letters containing notices, 93.
To report to execution creditor on failure to sell property seized, 101.
To report to judge at every court as to his and bailiff's sureties, 98.
To return commitments annually to inspector, 99.
To transmit confession of some of several defendants sued to judge for his order, 70.
To enter judgment thereon within one month, 70.
To transmit list of unclaimed moneys to county attorney, 98.
To transmit papers in transferred suit to High Court, 99.
Viva voce applications at trial, 130.
When defence entered in garnishment, 50.
When jury demanded, 90.
Where office to be kept, 83.
When summons not served in time for court, 103, 104.

Fees of, 163—
For filing certificate under *Mechanics' Lien Act*, 403.
In cases where amount claimed does not exceed $10.00, 385.
Not bound to take proceedings unless paid, 164.
Postages, etc., to be costs in cause, 165.
Proceedings requisite prior to order for execution for under section 54, 165.
Tariff of, 185, 192, 385, 386.
on appeals under *Master and Servant Act*, 175.
To give full statement of, on service of foreign process, 159.

CLERK'S FEE BOOK—
To be kept by clerk, 83.

CLERK'S NOTICES (*see* Index of Forms).

CLERK'S OFFICE—
To be within division, 83, 384.

LAW UNIVERSITY LIBRARY

CLERK AND SURETIES—

Particulars in actions against, 9.

COMMENCEMENT OF ACTION—

What is, 10.

COMMITMENTS—

Date of warrant of, 108.
Discharge of debtor, 109.
(*See* Judgment Debtor.)
Duty of bailiff executing, 102.
Life of warrant, 108.
Payment may be made on arrest, 109.
Renewal of, 108.
Return of, to be made to inspector, 99.
Time of detention under warrant, 103.
When warrants to be dated, 108.

COMPENSATION—

In attachment of goods, 18.
Of workmen for injuries, assessors, 414.

CONCURRENT SUMMONS—

Costs of, 11.
Requisites of, 11
Where defendants reside out of county, 11.

CONDUCT MONEY—

Of judgment debtor for examination, 107.
Of witnesses (*see* Index of Forms).

CONFESSION—

As to part and defence as to rest of claim, 61, 62.
Before action, requisites of, 62.
Clerk to give notice to plaintiff of, 92.
Costs subsequent to, 63.
Judgment on (*see* Judgment), 72.
Parties may admit part of claim and defend for remainder, 63.
Plaintiff, where no defence made, may elect to proceed on, or on judgment by default, 72.
Where some defendants served and others not, but have given confession, 70.
Judgment thereon, 70.

CONTESTED CASE—

Defined, 156.
When counsel fees allowed in, 130, 156.
(*See* Counsel Fees.)

CONTRACT—

Particulars in action on, 7.
Where *prima facie* liability proved, order may be made for preservation or custody of property, or payment of money into court, 135.

COSTS—

After notice of admission of claim served, 63.
Allowance of, by judge, 163.
Allowed only to bailiff for service of papers, 75.
Appeals from Court of Revision, 173.
Appeals in school disputes, 409.
Clerk to make out bill in detail, 97.
Counsel fees (*see* Counsel Fees), 130, 156, 158.
Fees to jury to be paid as, 378.
Garnishment when money paid into court, 46.
liability of garnishee, 47.
In attachment (*see* Attachment), 17, 19.
In suits by and against executors, 60.
May be deducted from money paid into court, 95.
Of clerk, order and execution for, 165.
Of concurrent summons, 11.
Of inspection of property, 135.
Of interpleader dismissed, 22, 24.
Of line fence appeals, 179.
Of notices in garnishee proceedings, 51.
Payable to judge's jury, 379.
Postage, etc., to be costs in the cause, 165.
Practice on allowance of, or certificate for, in any case, 163.
Practice on application and order for, 163.
Security for, in interpleader proceedings, 23, 25.
Security for, may be ordered, 161, 162.
Statement of, to be given by clerk when required, 97.
Taxation of, 97.
Taxed to bailiff, to be shown in procedure book, 87.
Taxation to be subject to revision of judge, 97.
To date of transfer to be certified by clerk, 91.
To follow event, 163.
Undertaking by next friend of infant for, 122.
When action discontinued, 130.
When judgment against future assets, 58.
When *plene administravit* not proved, 58.
Where claim does not exceed $10.00, 385.
Where defendant improperly sued, 112.
Where ordinary summons issued instead of special, 87.

COUNTERCLAIM—

Clerk's duties as to, 68.

LAW LIBRARY

COUNTERCLAIM—*Continued*—

Defendant may abandon excess, 74.
Effect of, 64.
Form of judgment to be in judge's discretion, 66.
Insolvency matter beyond jurisdiction, 68.
Judge may order exclusion of, in certain cases, 64, 65.
Judgment may be set aside, 67.
Judgment on, when established, 65.
Judgment where plaintiff does not appear, 67.
May be proceeded with, though action stayed, discontinued, or dismissed, 66.
May be set up by attaching creditors in attachment proceedings, 16.
Motion to set aside, 64.
Notice may be given by plaintiff admitting part, 63.
Notice of such admission to be given by clerk, 63.
Notice of, when and how given, 68.
Particulars of, to be filed and served, 68.
Payment into court in such cases, 66.
Proceedings in such cases, 65.
Procedure where several defendants, and some not served, 111.
(*See* Set-off.)
Proceedings subsequent to such notice, 63.
Proceedings where recovery of specific property sought by, and opposite party claims lien on same, 66.
Statement of claim in cross-action, 64.
What may be set up by way of, 64.
When judgment for defendant, execution and subsequent proceedings for balance of, 74.
Where one only of two defendants sued, 149.

COUNSEL FEES—

Contested case defined, 156, 157.
May be allowed on discontinuance of action, 130.
Order for, how made, 163.
When, and in what cases, allowable, 156, 157, 158.
When application for, to be made, 163.

COUNTY—

Defined, 3.
Provisional rules for, 136.

COUNTY COURT JUDGE—

Powers of, 132.

COURT—

Boundaries of divisions of, 349.
Business of, may be transacted by judge at any time, 132.

COURT—*Continued*—

Defined, 3.
"Home" and "Foreign," defined, 3.
If not held on day appointed, no abatement, 131.
Rules of High Court referring to Division Court, 395.

COURT OF REVISION—

Appeals from, 171.

COVENANT OF CLERKS AND BAILIFFS—

Action on, 9, 377.
By guarantee company, renewal receipt to be filed with clerk of the peace, 376.
(*See* Bond.)
Fee for filing renewal, 377, 400.
Report at every court as to, 98.
To enure for benefit of Crown, 399.

CREDITORS' RELIEF ACT—

Proceedings where execution or certificate filed and not paid in full, and money not made, 76.
Where claim not paid, and sheriff's return relates to Division Court judgment or execution, 76.
Where such return relates to claim within Division Court jurisdiction, 77.

CROSS-JUDGMENTS—

Defects in proceedings may be amended on terms, 124.
Execution on, 83.
To be set off, 83.

D

DAMAGES—

By dogs to sheep, 170.
Counterclaim may be for, 64.
In detinue, payment into court, 127.
In interpleader proceedings (*see* Interpleader), 22, 24, 32, 34.
In judicial districts, for damage by cattle, 141.
In replevin (*see* Replevin), 32, 34, 39, 40.

DAMAGE FEASANT—

Replevin of goods seized for, 30, 41.
When property distrainable for, 30.

DATE OF PROCESS, 9.

Of alias or pluries summons, 10.

DEATH—

Of one or more plaintiffs, rights of survivor, 82.
Of party not to abate action, 117.
Procedure subsequent to, 121.
Reviving proceedings on, 80.
Survival of cause of action, 117.
When party entitled to proceed fails to appear, 121.

DEBT ATTACHMENT BOOK—

Entries to be made forthwith of order or summons, 49.
To be kept by clerk, 83.

DEBT—

First process in action for, 10.

DEBTOR—

(*See* Absconding Debtor), 16.
(*See* Judgment Debtor), 107.

DECLARATION—

Form of, 6.
Judgment by, 70, 32.
Who may take, 6.

DECREES—(*see* Orders).

DEED—

By sheriff, 384, 415.

DEFAULT OF DEFENCE—(*see* Judgment), 19, 33, 34. 38.

DEFENCE—

Admission of part, defence as to rest, 61.
Application for leave to, practice on, 147.
By attaching creditors where several attachments issued, 16.
By executors, etc. (*see* Executors), 55.
By way of counterclaim (*see* Counterclaim), 64,
Clerk to notify plaintiff, 62.
Costs subsequent to notice of admission, 62.
For part, judgment for balance to be entered, 75.
For part, notice by clerk of plaintiff's intention to proceed for remainder, 94.
In garnishee proceedings (*see* Garnishment), 49.
In replevin, how entered (*see* Replevin), 38, 39.
Judgment in default of (*see* Judgment).
May be allowed on sufficient grounds after minute of judgment entered, 72.
Notice may be given admitting part of claim, counterclaim, or set-off, 63.
Notice of default of, unnecessary in claim under $10.00, 385, 386.

DEFENCE—*Continued*—

Notice of statutory defence, set-off, etc., sufficient, 64.
Of notice to creditors and distribution of assets by executors, 59, 60.
Of set-off, counterclaim, statutes of limitations, or other statutory defence, notice to be given, 68, 125.
On leave being granted, clerk to notify plaintiff, 94.
Proceedings where part of claim not disputed or admitted, 61, 376.
Requisites of notice, 62.
Right of one of several joint contractors where plaintiff proceeds against one only, 149.
Untenable, will make garnishee liable for costs, 47.
Where none to part of claim, plaintiff may proceed as to such part without prejudice to rights as to remainder, 376.
(*See* Defendant.)

DEFENDANT—

Added summons to, 116.
Change or substitution of (*see* Amendment and Change of Parties), 111.
Counsel fee when action discontinued, 130.
Definition of, 3, 6.
How described in summons and particulars, 7.
Not served, may be struck out, 111.
Out of province, action may be brought against, 387.
Process where more than one resident in different counties, 11.
Settlement of suit by, to be made with clerk, 106.
Where more than one, having different interests, 12.

DELAY—

Of suit by clerk or bailiff, 105.

DELIVERY—

Of postponed judgment, 147.

DEPOSIT—

Bailiff required to seize incumbered goods, 23.
For costs of appeal, *Ditches and Watercourses Act*, 182.
For fees of bailiff, 164.

DEPOSITIONS—

As to inspection of subject-matter, 135.
By clerk in solicitor's office, 143.
By illiterate deponent, 143.
Should state source of knowledge, 143.

DETENTION—

Of subject-matter of action may be ordered in certain cases, 133.

DETINUE—

Detention of subject-matter, 133.
Paying money into court in action of, 127.
Tender of subject-matter, 128.

DEVASTAVIT—

Claim of, 54.
Definition of, 54.
Judgment, when proved, 55.
What proof necessary, 59.

DEVISE—

When validity of, in question action may be removed by certiorari, 390.

DISABILITY—

Application by person under, to discharge order adding him as party, 120.

DISBURSEMENTS—

Affidavit of (*see* Witnesses), 158, 159.

DISCONTINUANCE—

Counsel fee may be allowed on, 130.
Dismissal of action when action for same cause pending in another court, 148.
In replevin, 40.
Of action, practice as to, 130.

DISMISSAL—

Irregularity no ground for, 123.
Of action when action for same cause pending in another court, 148.

DISPUTING CLAIM—(*see* Defence).

DISPUTE NOTICE—(*see* Defence).

DISTRESS FOR RENT—

Or damage feasant—replevin of goods seized for, 28, 30.

DISTRIBUTION—

Plan of, 18.
application to vary, 18.

DISTRICT (Provisional Judicial)—

Rules extend to, 136.
Transfer from, 414.

DITCHES AND WATERCOURSES—

Appeals under Act, practice as to, 179, 181, 182.
Act respecting, 179.
Forms to be used, 182.
Rules inapplicable, 181.

DOCUMENTS—

Inspection of, 154.
Joint possession of, 156.
Judge may exclude, if not produced, 154, 155.
Notice of, to be given, 154, 155.
What are privileged, 155, 156.

DOGS—

Tax on Dogs Act, 169.

E

ELOIGNMENT (*see* Replevin)—

Bailiff to make return thereof, 37.
Writ in withernam to issue, 37.

EMOLUMENTS—

Clerk's return to (*see* Return), 41, 97.

ENQUIRIES—

By parties to be answered by clerk, 88.

ENTRY OF JUDGMENT—

By default, when all defendants not served, 69.

EQUITABLE EXECUTION—

Order for sale under, 382.
Proceedings by way of, may be taken in certain cases, 381.
Proceedings on, 381, 382.
Rules of High Court as to, 381, 382.

EVIDENCE—

By sample of goods, order for, 133.
Experiment, order for, 133.
Notes of, to be forwarded by clerk on application for new trial, 96.

EXAMINATION—

Of inspector appointed by judge, 135.
Of judgment debtor, application for, 107.
Of judgment debtor, list for court, 89.
Of judgment debtor to be entered in Judgment Debtors' Book, 107.
Service of summons for, 10.

EXCESS (*see* Abandonment of Excess), 9.

Defendant may abandon, or set off, or counterclaim, 74.
When defence or counterclaim involves matter in, 68.

EXECUTION—
Against absconding debtor, clerk to distribute proceeds ratably (*see* Absconding Debtor), 17.
Against future assets, 80.
Against joint stock companies, 80.
Bailiff to endorse day and hour of receipt of, 103.
to give full statement of fees, etc., 103.
to make return of all executions at each sitting of court, 104.
Clerk to whom return is to be made, 73.
Duties of bailiff in respect of, 100, 101, 102.
For payment of clerk's fees under section 54, 165.
For woodman's lien, 412.
How to be printed, 75.
In force for three years, 415.
In High School cases, 410.
In Public School cases, 408.
In Separate School cases, 407.
Leave to issue must be obtained,
on change or death of parties, 80, 81.
when husband entitled or liable in action for or against wife, 80, 81.
on judgment of assets in future, 80, 81.
against shareholder, or officer, or person representing joint stock company, 80, 81.
May issue at any time within six years, 80.
May issue forthwith on judgment by default, 71, 73, 75.
May issue for part of claim admitted without prejudicing rights as to remainder, 376.
Memo. to be endorsed by clerk on such return, 105.
Must be returned within thirty days, 101.
Not to be issued to bailiff of another county, 73.
Not to issue on process more than six years old without leave, 82.
On cross-judgments, 83.
On judgment for defendant on set-off or counterclaim, 74.
On judgment on award, 73.
On judgment on confession, 63.
On order for speedy judgment, 75.
On return "property on hand," etc., new process to issue, 101.
Procedure when return not made in time, 101.
Property seized under not to be sacrificed, 101.
When executed out of division, but within the county, 73.
When issuable at expiration of fifteen days, 73.
When judgment postponed under section 144, 91, 92.
Where judgment must be revived prior to issue of, 80, 82.
Whole money made to be returned by bailiff, 102.
When it may issue, 73, 379, 415.

EXECUTION—*Continued*—
Where judgment signed by clerk, to be issued forthwith, 73.
Against Lands—
Act respecting, 415.
Bars future proceedings (*see* Equitable Execution), 381.
Duty of sheriff, 379.
Equitable execution may be resorted to in such cases, 381.
Extent of operation, 383.
Forms of, 394.
May be issued on return of *nulla bona*, direct to sheriff, on judgments over $40.00, 379, 380, 384.
Effect of such execution, 379, 380.
May issue direct to sheriff, 415.
Proof of title under, 384, 415.
Rights of creditor under, 383.
Title by sheriff's deed, 384, 415.
When executions against lands renewable, 415.
When returnable, 392.

EXECUTORS AND ADMINISTRATORS—
Cases where there is deficiency of assets, 54.
Claims by or against may be joined with personal claims in respect of estate, 61.
Cost in actions against, 57, 58.
Debts all payable *pro rata*, 54.
Defence of notice to creditors and distribution of assets, 59, 60.
Definition of, 2.
executor *de son tort*, 5,
Definition of devastavit, 54.
Effect of advertisements for creditors, 55, 60.
Foreign creditors, 55.
In judicial districts, 139.
Infant not liable as executor *de son tort*, 5.
Judgment for costs in actions by, if plaintiff fails, 60.
Judgment on devastavit, 55.
when denial of representative character or release alleges, 55, 56.
where demand denied, 56.
where *plene administravit* alleged and proved, but demand denied and both proved, 57.
on *plene administravit* not proved, and demand denied, but proved, 57.
on *plene administravit* proved, and demand admitted, 57.
where demand admitted, and *plene administravit* alleged, but not proved, 58.
where judgment rendered *quando acciderint*, suggestion of devastavit, 57, 58.

EXECUTORS AND ADMINISTRATORS—*Continued*—
Judgment, effect of failure to plead *plene administravit*, 56.
where judgment given *quando acciderint* summons may issue suggesting devastavit, 58.
leave must be obtained to issue execution on judgment *quando acciderint*, 80, 81.
provisions of rule 90 to apply to enquiry into devastavit, 59.
in actions against, not otherwise provided for, 59.
May sue without joining person beneficially interested, but such persons may be made parties, 60.
Notice of such defence to be given, 60.
Of suit brought by or against, in his own name instead of representative capacity, amendment may be made, 113.
Particulars when devastavit claimed, 54.
Parties suing may suggest devastavit, 54.
Proceedings on deficiency appearing, 55.
Representative character to be stated in the claim, 60, 61.
When liability admitted money to be paid into court, 59.

F

FEE BOOK—
To be kept by clerk, 83, 86.
by bailiff, 84.
FEES—
Affidavit of disbursements may be required, 158.
Allowance of, by judge, 163.
Detailed statement of, to be endorsed by bailiff on execution, 103.
Detailed statement of, to be endorsed on warrant of commitment, 102.
Forfeited by delaying suit, 105.
For entering certificate under *Mechanics' Lien Act*, 402.
For filing renewal of covenant, 377.
For service of process from foreign court, 159.
For statements of costs, 97.
In action for less than $10.00, 385-7.
on mechanics' lien, 402.
In suits under $10.00, 192, 385, 387.
Of bailiff, to be deposited in certain cases, 164.
Of bailiff to be entered in procedure book, 87.
Of jury, by whom payable, 379.
summoned by judge at trial, 379.
Of jury, to be deposited with clerk towards costs, 378.
On appeals under *Master and Servant Act*, 175.
Line Fences Act, 178.
Ditches and Watercourses Act, 181.

FEES—*Continued*—
Order and execution for, under section 54, 165.
Payable to judge's jury, 379.
Rules respecting tariff for officers, 163.
To appraisers, 192.
To be endorsed on warrant of commitment, 108.
To be entered in fee book, 401.
To be paid to judgment debtor residing over three miles from court, 107.
To counsel (*see* Counsel Fees), 130, 156.
To witnesses, to be taxed by clerk, 158.
Tariff of, to clerks and bailiffs, 185.
To witnesses (*see* Witnesses), 191.
Until paid, clerk need not take proceedings, 163.

FENCES—
(*See* Line Fences), 176.

FLOODING LANDS—
Ordinary summons to issue, 13.
When action may be brought, 13.

FOLIO—
Defined, 5.

FOREIGN CORPORATIONS, FIRMS, AND INDIVIDUALS—
Defendants residing out of Ontario may be sued in Division Court, 387.
Service on, 13.

FOREIGN COUNTRY—
Service of summons in, 389.

"FOREIGN COURT" AND "FOREIGN DIVISION"—
Clerk of, not to receive money or settle suit, 106.
Clerk to give full statement of fees, 159.
Defined, 3.
Procedure on executions in, 73.
Procedure on service of summons in, 88, 159.

FOREIGN SUMMONS BOOK—
Entries to be made in, 88.

FORFEITURE OF OFFICE—
By clerks and bailiffs (*see* Clerk and Bailiff), 102, 105.

FORMS (*See* Index of Forms)—
Of procedure book, 85, 384.
Prescribed to be used, 125
Unprovided for, how to be framed, 125.
Used previous to framing of rules may be continued with judge's approval, 125.

FRAUDULENT CONVEYANCE—

Motion to set aside, and sell lands, 381.

FURTHER PARTICULARS—

Judge may allow, 8

FORMAL OBJECTIONS—

Power of judge to amend, 123.
Proceedings not to be defeated by, 123.
(*See* Irregularity.)

G

GAMBLING DEBT—

Court has no jurisdiction on note of hand for, 122.

GARNISHMENT OF DEBTS—

Against foreigner, 388.
Application and affidavit for order after judgment, 41.
Application for attachment under section 188, 41.
Application of any person interested for directions, how to proceed, 42.
Application to discharge garnishee order not to be *ex parte*, 48.
Assignment of, to garnishee, when broken, 49.
Bond from primary creditor, for repayment, 48.
must be approved by clerk, 48.
Clerk to make entries in Debtors' Attachment Book, 49.
Costs in such cases, 45.
Examination of garnishee on judgment summons, 392.
Garnishee defending to leave address with clerk, 124.
Garnishee may be examined as a judgment debtor, 392.
Garnishee not liable for costs, 47.
Garnishee not to pay without order, 46.
In High Court cases to be entered in procedure book, 53.
Judge may add parties to action, 42.
Money paid into court, application of, 46.
Order after judgment to contain appointment, 52.
Primary debtor to be served, 44.
Procedure where creditor fails, and there is a controversy between debtor and garnishee, 42.
Procedure where garnishee pays into court before trial, 45, 46, 47.
Proceedings where amount garnished in High Court, 53.
Roving garnishee order may issue, 42.
Service of summons, 44.
Statement to be endorsed on summons in wages' cases if debtor is unmarried or has no family depending on him for support, 391.
Substitutional service, 44.

GARNISHMENT OF DEBTS—*Continued*—
Suit within jurisdiction of Division Court, 52.
Transcript to be filed on judgment of foreign court, 46.
Warning to be endorsed on summons or order, 44.
where debt for wages, 44.
When garnishee liable for costs of execution against him, 49.
When primary debtor unmarried, 391.
When wages are exempt, 391.
Where debt claimed by third party, 45.
Where exemption must be established by defendant, 43, 391.
Defences in—
All parties interested or affected may enter, 49.
Clerk to notify garnishee thereof, 50.
Copy to be mailed by clerk to parties, 50.
Costs of notices, costs in cause, 51.
Costs of suit, 53.
Denial of indebtedness by garnishee, 52.
Effect of want of notice, 50.
Form of garnishee summons, 53.
Notice may be filed by creditor, admitting defence, 50.
Particulars to be filed, 50.
Payment by garnishee, 53.
Proceedings against garnishee under *The Judicature Act*, 51, 52.
Procedure where garnishee does not appear, after service, 51.
Procedure where some parties only are served, 50.
Service of the order, 53.
What may be set up, 49.

GOODS—
Chattels and property defined, 4, 6.
Seizure of, under execution (*see* Execution), 100.

GUARANTEE COMPANY—
Renewal of bond by, 99, 376, 400.

GUARANTY—
Claim need not contain copy of, 132.

H

HEARING (*see* Trial)—
High Court rules applied, 50.
In attachment where service of summons not personal, 16.

HIGH COURT—
Rules applied, 50.

HIGH SCHOOLS—
Disputes between trustees and teachers, 410.
Judgment and execution, 410.

TORONTO UNIVERSITY LAW LIBRARY

HINDRANCE OF SUIT—
By clerk or bailiff, penalty, 105.

"HOME COURT" AND "HOME DIVISION"—
Defined, 3.

HUSBAND AND WIFE—
Claims by, may be joined, 116, 121.
Leave to issue execution requisite where husband entitled or liable for or against wife, 80, 81.
Maintenance of deserted wife, appeal, 410.
When improperly joined or omitted claim may be amended, 116.
Who should be plaintiff when interested in interpleader proceedings, 20.
(*See* Married Women.)

I

INDEX—
To procedure book, form to be used, 84.

INFANT—
May sue for wages, 122, 139.
Not liable as executor *de son tort*, 5.
Person not to be added as next friend without consent, 114.
To sue by next friend, 122.

INQUIRIES—
Clerk to answer, 88.

INSOLVENCY—
Not to abate action, 117.

INSPECTOR—
Declaration by, as to wrongful custody of clerk's papers, 377.
Member of Board of County Judges, 377.
Return to, 97.

INSPECTION—
Judge may inspect, or order jury to inspect, property, 148.
Of documents, when parties entitled to (*see* Documents), 154.
Of subject-matter of suit may be ordered, 133.
Time for notice for, 155.

INSTALMENTS—
Judgment for payment by, when and how payable, 74.

INTEREST—
May be added to claim, 376.
Notice of change of, 118.
Of defendants in foreign county and home county not joint, service, 12.
Purchase by clerk or bailiff prohibited, 185.

INTERPLEADER—
Adjudication on claim, 21, 22.
Application for, 24.
Change of venue, 23.
Claimant may pay money into court, 23.
Costs in, where claim dismissed, 22.
Costs of keeping possession, 27.
Damages may be paid into court, 22.
Defences where damages claimed, 22.
Duty of bailiff when property incumbered, 23.
From what court summons to issue, 23, 24.
Grounds of claim, 21.
How case to proceed, 20.
How value determined, 24, 26.
Issue may be tried by consent, though rules not complied with, 21.
Landlord's claim for rent, 19, 21.
Moneys in hands of clerk to be held until adjudication, 23, 25.
Notice of claim, 19.
On High Court execution where value of goods not over $100.00, 395.
Particulars of claim in, 20, 21.
where damages claimed, 22,
where damage claimed against bailiff, 22, 24.
when damages claimed against bailiff and creditor, 22, 24.
Perishable goods, how disposed of, 23, 26.
Place on trial list, 89.
Proceedings if rules not complied with, 21.
Proceedings in, 19-27.
Question to be tried, 20.
Security in such cases, 27.
Security to be given by claimant when property incumbered, 23, 25.
Summons, service of, 19.
to be issued by clerk on application of bailiff, 23.
When husband and wife interested, 20.
Where claimant wishes to prevent sale of goods under section 269, 27.
Where damages claimed against bailiff, notice to be given, 22.
Who should be plaintiff, 20.
INTERPRETATION (*see* Words), 2.
Clauses of *Judicature Act* to apply, 5.
Of penalty and forfeiture clauses, 399.
INTOXICATING LIQUORS—
Act respecting sale of, near public works, 401.
Note of hand for, not recoverable in Division Court, 122.
IRREGULARITY—
Application to set aside for, 123.
Practice as to, 123.
Proceedings not void for, 123.
Waiver of, 123.

OSGOODE HALL LAW LIBRARY

ISSUE OF PROCESS—
By whom, 9.

J

JOINT CONTRACTORS—
Right of defence by one of several, 149.

JOINT STOCK COMPANY—
How judgment against, recoverable, 81.
Leave necessary to issue execution against, or against public officer or person representing, 80, 81.
Wages due by, 9.

JOINING CAUSES OF ACTION—
With replevin claim not allowed, 27.

JUDGE—
Defined, 3.
Judicial districts may have County Judge of Simcoe, 138.
deputy judge may be appointed, 137.
May inspect or order jury to inspect property, 148.
May order amount brought into court or secured, 135.
May order change of venue in interpleader, 123.
May order detention, preservation, inspection, surveying, or measuring of subject-matter of suit, 133.
May order preservation or interim custody of property, 133.
May sit and transact business of court at any time, 132.
Powers on application for new trial (*see* New Trial), 150-154.
Procedure on postponed judgment under section 144, 91, 377.

JUDGE'S LIST (*see* Trial Lists), 89, 90.

JUDGMENT DEBTOR—
Application for summons against, 107.
Date of examination to be entered in Judgment Debtors' Book, 107.
Garnishee may be examined as, 392.
Payment on arrest of, 109.
Residing more than three miles from court entitled to fees, 107.
Return of commitments to be made yearly, 99.
List of, to be examined, 89.
Summons not to issue after six years without leave, 82.
Summons not to issue after issue of *fi. fa.* lands without leave, 353.
Summons must be served personally, 340.
Warrant of commitment of (*see* Commitment), 108.
When discharged, not to be re-summoned without notice, 107.
When such summons may issue, 107.

JUDGMENT DEBTORS' BOOK—
To be kept by clerk, 83, 107.

JUDGMENT DEBTORS' LIST (*see* Trial Lists), 89, 90.

JUDGMENT SUMMONS (*see* Judgment Debtor), 107.
Must be served personally, 390.
Not to issue after *fi. fa.* lands without leave, 383.
Not to issue on judgment over six years old without leave, 82.

JUDGMENT—
Alteration of, instead of granting new trial, 153.
Defined, 4, 6.
Action on, in foreign country, 380.
Against married women (*see* Married Women), 145, 146.
By default, execution to issue forthwith, 73, 75.
By default, for part of claim admitted, 61.
to be entered within one month, 70, 72.
defendant to be notified, 72.
cannot be entered unless particulars of claim are given, 8.
Cross-judgments to be set off, 83.
Enforcement of, by survivor after death of one or more plaintiffs, 82.
Entry of, on cross-judgment, 83.
Execution may issue on counterclaim or set-off as usual, 74.
within six years, 80.
stay pending appeal in school cases, 408.
Execution thereon, 83.
Filed under *Creditors' Relief Act*, 76.
For over $40.00, to carry same remedies as County Court judgment, 379.
How to be entered in procedure book, 73.
In actions against executors, etc. (*see* Executors), 59.
In garnishment (*see* Garnishment), 51.
Irregularly signed, not void, 123.
Line fence appeals, 178.
May be entered for part, without prejudice to right to recover balance, 376.
May be set aside, 67.
Motion for, under section 111, practice as to, 75.
Of assets in future, execution to be issued on leave of judge, 80, 81.
Of Court of Appeal, on appeal from Division Courts (*see* Appeal), 166, 167.
On an award, 73.
On confession before action, 62, 63.
On confession, where no defence made, 72.
of some defendants, 70.
On counterclaim exceeding jurisdiction, 68.
may be in judge's discretion, 66.

JUDGMENT—*Continued*—
On counterclaim, plaintiff claiming a lien, 66.
where plaintiff does not appear, 67.
On proof of devastavit, 55.
On set-off or counterclaim for balance due defendant, 65, 74.
On special summons, several defendants, some not served, 69.
sole defendant or several defendants, by default, 70.
several defendants, on confession, by those not served, 70.
all defendants not served on same day, 71.
several defendants, some disputing and others not, 71.
defendant may afterwards be let in to defend, 72.
Other cases in which leave required before execution, 80, 81.
Party dissatisfied with, may apply to vary, etc., 79.
Postponed, notice of delivery necessary, 91, 377.
judge may deliver when ready, 377.
to be sent to clerk, 377.
Postponement, action not to be concluded by, 147.
Revival of (*see* Reviving Judgments), 80, 81.
Satisfaction of, party making may require same entered, 132.
Special, to be prepared by clerk, etc., 79.
application to vary, 79.
defined, 79.
under *Ditches and Watercourses Act* and *Line Fences Act*, 178, 181.
to be filed and minuted, etc., 79.
Summons to be filed when entered, 91.
Takes effect from date of pronouncement, 79.
Time for payment of, when payable by instalments, 74.
To be entered by clerk within one month, 70, 72.
Transcript of, bars future proceedings in same court, 77.
entry in procedure book, 79.
how to be prepared, 78.
not to issue within fourteen days from trial, 78.
Transferred cases, how entered, 91.
Under section 110, clerk to notify defendant, 72.
When and where payable, 73.
When defence for part of claim only, 61, 62, 75, 376.
Where executor or administrator denies representative character, 55.
Where money paid into court, 47.

In Replevin—
In ordinary actions of, 41.
On default for want of notice of defence, 39.
Where defendants pay money into court, 41.
Where distress for rent and defendant succeeds, 40.

JUDICATURE ACT—

Garnishee proceedings under, 51, 52.
Rules under, application to Division Courts, 5, 395.

JURAT—

To affidavit, requisites of, 144.
alterations in, 144.
by two deponents, 143.
by blind or illiterate deponent, 143.

JURISDICTION—

Accumulated interest not included in determining, 376.
Appeals from Division Courts under, 408.
For damage by cattle, 141.
In actions for flooding lands, 13.
In actions for recovery of penalties, 399.
In cases against defendant out of province, 387.
In cases under Act respecting public officers, 399.
In judicial districts, 138.
In personal actions for $100.00, where parties consent, 375.
In replevin (*see* Replevin), 28, 40.
None on note for gambling debt or spirituous liquors, 122.
On counterclaim (*see* Counterclaim), 64.
exceeding jurisdiction, 68.
Under Act respecting maintenance of wives, deserted by their husbands, 410.
Under Act respecting sale of intoxicating liquors near public works, 401.
Under Act to facilitate wage-earners' rights and rights of sub-contractors, 404.
Under *High Schools Act*, 410.
Under *Mechanics' Lien Act*, 402, 403.
Under *Public Schools Act*, 408.
Under *Separate Schools Act*, 407.
Under *Woodman's Lien for Wages Act*, 411.
Where leave granted to sue in adjacent division, 10.
When ousted by title to land, validity of devise, etc., action to be removed by certiorari, 390.
Where defendants in different counties have different interests, 12.

JURY—

Fees of, to be deposited with clerk towards costs, 378.
when ordered by judge at trial, 379.
In judicial district, 137.
In replevin (*see* Replevin), 40.
Judge may non-suit, 147.
may make jury a condition on granting new trial, 151.
Liability for costs of, 379.

OSGOODE HALL LIBRARY

JURY—*Continued*—
List of cases to be prepared, 89, 90.
May be ordered to inspect subject-matter of suit, 148.
On appeal, under *Master and Servant Act*, 175.
Tax on Dogs Act, 170.
Party entitled to, on second trial, 151.
Proceedings where required, 90.

JUSTIFICATION OF SURETIES—
Affidavit of, before whom to be sworn, 400.

L

LANDS—
Executions against, 379, 380.
Flooding of, action for, 13.
Lis pendens against, 381, 382.
When title in question, action to be removed by certiorari, 390.

LANDLORD'S CLAIM FOR RENT—
Interpleader, 19, 21.

LEAVE—
Deliver claim in interpleader, 21.
Defend, after judgment by default, 72, 147.
notice of, 94.
to be entered in procedure book, 126.
formal order not necessary, 126.
Must be obtained prior to execution in certain cases, 80, 81.
Read affidavit having alteration in jurat, 144.
Sue in adjoining division, 11, 18.
To be obtained to issue execution in judgment over six years old, 82.
To take proceedings, practice as to, 126.

LETTERS—
Containing notices to be registered, 95, 165.
Postage to be costs in the cause, 165.
Service by, 124.

LINE FENCES—
Appeals under *Line Fences Act*, 176.
practice, 176.
deposit for cost, 179.
forms, 179.
Text of the Act respecting, 176.

LIENS—
Mechanics' (*see* Mechanics' Liens), 402.
Woodman's, for wages, 411.

LIS PENDENS—
In cases of equitable execution, 381, 382.

LIQUORS—
Court has no jurisdiction in action on note for, 122.
Sale near public works, 401.
LISTS—
Cases for trial, 89, 90.
requisites of, 90.
may be altered, 89.
Unclaimed moneys, 98.

M

MAGISTRATE—
Appeal from, in cases of maintenance, 410.
Act as judge in judicial districts, 137.
Powers of, in wages cases, 404.
MAIL—
Service by, 124.
MARRIAGE—
Not to abate action, 117.
MARRIED WOMEN (*see* Husband and Wife), 80, 116, 121.
Capable of suing and being sued, 145.
Claims by and against husband and wife may be joined, 121.
Contracts by, 145.
Deserted by husband, maintenance of, 410.
Execution against, at suit of husband, 80.
Judgment against, 146.
forms of, 146.
Jurisdiction of court under, 410.
Particulars in action against, 145.
Which to be plaintiff in interpleader when both interested, 20.
MATTER—
Meaning of word, 6.
MASTER AND SERVANT—
Act respecting, 168.
Act for enforcement of orders under, 169.
Appeals respecting, 167.
Bond on appeal, 174, 175.
Fees of clerk and bailiff, 175.
Forms on appeal, 171.
Jury subpœna, 176.
Practice on appeals, 174-176.
When jury required, 175.
Witness' subpœna, 176.
MECHANICS' LIENS—
Action by one creditor to inure for benefit of all, 403.
Certificate of award, 403.
Claim of lien to give address of claimant, 404.
Consolidation of actions on, 405.
Enforcement of, 402, *et seq.*

MECHANICS' LIENS—*Continued*—
Fees payable under, 403.
Jurisdiction as to, 402, 403.
Powers of judges respecting, 405.
police magistrate respecting, 406.
Procedure in wages claims, 404.

MEETING—
Board of County Judges, 141.

MEMORANDUM—(*see* Warnings).
Bailiff's return, 105.
Garnishee summons, 44.
On summons in garnishment (*see* Garnishment), 44.
Renewal of execution, 82.

MILEAGE—
Affidavit of, 90.

MINOR—
Suit for wages by, 122.
Undertaking by next friend for costs, 122.

MINUTES OF JUDGMENT—
Action against several defendants, some not served, 69.

MISJOINDER—
Definition of, 114.
Of parties not to defeat action, 114.

MISTAKE—
Defined, 110.
Name of plaintiff, 110.

MONEY—(*see* Payment into Court).
Bailiff not to receive unless he holds execution, 106.
Clerk not to receive unless suit is pending, 106.
on foreign summons, 88.
to give notice of payment into court, 93.
not to withhold, 93.
Collected by bailiff to be paid to proper clerk, 102.
entered in cash book, 103.
parties to direct mode of transmission, 128.
not to be sent to clerk of another division without plaintiff's order, 129.
on transcript, how payable, 129.
Paid into court to be retained until judgment, 24, 95.
not to be paid to suitors without notice to solicitors, 94.
in detinue, 127.
in interpleader, 22, 24.
trial for balance of claim, 126.
Payable at office of clerk, 128.
Unclaimed, return to be made to county attorney, 61, 98.

MOTION—(*see* Applications).
For speedy judgment, 75.
preservation of property, or experiments, inspection, etc., 134.
Summary at trial, 129, 130.
Set aside or stay proceedings, 130.

N

NAME OF PARTIES—
Amendment, when insufficient, 115, 116.
To be stated in claim, 7.

NEW TRIAL—
Application for, 96, 150.
Different judgment instead of granting, 153.
Evidence taken in writing to be forwarded to judge, 96.
Judge's powers in respect of, 153.
Judgment of Court of Appeal for, 165.
Practice respecting application and order, 150, *et seq.*
Service of papers by mail, 96.
Time for making application, 152.

NEXT FRIEND—(*see* Infant).
Consent of, necessary in action by infant, 114.
Must sign undertaking for costs, 122.
Necessary in an action by an infant, 122.
Not a party to the action, 5.
Who may be, 123.

NON OINDER—
Definition of, 114.
Of parties not to defeat action, 114.
Set-off or counterclaim not defeated by, 149.

NON-COMPLIANCE WITH RULES—
Judge may adjourn trial on account of, 129.
No ground for dismissal of action, 123.

NON-SUIT—
Powers of judge to, 147.

NOTES OF EVIDENCE—
To be sent to judge for use on application for new trial, 96.
When to be in writing, 96.

NOTE OF HAND—
For gambling debt, liquors, etc., no cause of action, 122.

NOTICES—

By Clerk—

Admission of part and defence as to balance of claim, 62.
Adjournment when neither party appears, 154.
Appeal under *Ditches and Watercourses Act* to be sent to judge, 179.
Line Fences Act to be sent to fence-viewers, 177.
Master and Servant Act to be sent to magistrate, 175.
Change of venue on summons, 14.
title to judgment, 118.
Defence or other material matter, 50, 92, 95.
Delivery of postponed judgment, 91, 377.
Leave given to defend, 94.
Motion made summarily at trial, 130.
On special summons, 223, 224, 225.
Payment into court in garnishment, 47.
Plaintiff's intention to proceed for balance of claim, 94.
Plea of tender or payment into court, 96.
Preparation of plan of distribution in attachment cases, 18.
Receipt of moneys, 93.
Registration when sent by mail, 95.
Sale of perishable goods, 26.
Trial of transferred case, 91.
When claim under $10.00, notice of default of defence unnecessary, 385.

By Parties—

Acceptance of part of claim admitted, 62.
Admission of debt, 50.
defence, 50.
Appeal under *Ditches and Watercourses Act*, 179.
Line Fences Act, 176.
Master and Servant Act, 174.
By executors to creditors, 55, 60.
Counterclaim, etc., to have effect of dispute notice, 64.
Defence, counterclaim, etc., 50.
Disputing jurisdiction, 388.
For inspection of papers, etc., 154.
Generally, 129.
Interpleader proceedings, 20.
Leave to issue execution, 80, 81.
Mailed in letter must be registered, 95, 165.
Motion for new trial, 96, 150.
speedy judgment, 75.
Must be in manuscript or print, 124.
Replevin, 31.
Set-off or counterclaim, 68.

NULLA BONA—

Must be returned before issue of *fi. fa.* lands, 380, 389.

NUMBER—

Singular and plural convertible terms, 2.

O

OATH OR AFFIRMATION, 144.

Administered in court, 144.
Definition of, 2.

OBJECTIONS—

Formal, not to defeat any proceeding, 123.

OFFICE—

Division Court to be within division, 83, 384.
Lieutenant-Governor may designate place, 381.

OFFICERS—

Act respecting public officials, 399.
Bonds and covenants by, 400.
Fees (*see* Index to Forms), 185, *et seq.*
Fee books of, 401.

ONUS OF PROOF—

Of exemption from garnishment, 43.

ORDER—

Definition of, 4.
Distinction between interlocutory and final, 6.
Entry by clerk in procedure book, 73, 75, 79.
Giving leave to take a proceeding unnecessary, 126.
to be entered in procedure book, 126.
Garnishing debt to contain an appointment, 52.
Sale of perishable goods, 26.
Special, to be prepared and entered by clerk, 79.
what is, 79.

ORDER BOOK—

To be kept by clerk, 83, 84.

ORDINARY SUMMONS—

Costs when special summons warranted, 87.
Service of, 12, 13, 37, 88, 104.
To appear, 10.
To issue in action for flooding lands, 13.

P

PAPERS—
Clerk to keep and produce when required, 87.

PARRY SOUND—
County Judge of Simcoe may hold Division Court, 138.

PARTICULARS OF CLAIM—
Abandonment of excess on, 9.
Against married women, 145.
officers and sureties, 9.
By trustees, etc., must state capacity in which plaintiff sues, 60.
Copy to be attached to summons served, 12.
contents of, 8.
Interpleader claims, 20, *et seq.*
Promissory note or guarantee, 132.
Replevin, 29, 32.
Suit in adjoining division nearest defendant's residence, 8.

PARTIES—
Added, non-appearance at trial, 117.
Amendment and change of, 110, *et seq.*
Consent of new plaintiff necessary on change of, 110.
Definition of word, 2.
Death of, revival of proceedings, 80.
subsequent procedure, 121.
Names and residences in claim, 7.
Next friend is not, 51.

PAYMENT—
By instalments, 74.
Clerk to give notice to suitors of, 93.
On arrest under warrant of commitment, 109.
On foreign summons not to be accepted, 88.
To bailiff invalid, 106.
To creditor by garnishee before judgment invalid, 46.
To suitors by clerk, 128.
Into Court—
Deemed notice of defence, 64.
Detinue cases, 127.
Executors, etc., admitting liability, 59.
Garnishment, acceptance, 47.
to relieve from costs, 46.
Interpleader cases, 24, 27.
Money not to be paid out before judgment, 95.
Notice of intention to proceed for balance, 126.
Order for, when *prima facie* case made out, 135.
Sections and rules relating to practice, 128.
Trial of claim for balance, 126.
To prevent sale of goods claimed in interpleader, 27.

PENALTY—

Recovery of, for contravention of statute, 399

PENDING SUIT—

In another court, 148.

PERISHABLE PROPERTY—

Procedure on seizure of, 26.

PERSON—

Definition of word, 2.

PERSONAL ACTION—

For less than $100.00 is within jurisdiction, 139, 375.

PETITIONER—

Definition of word, 3.

PLACE—

Of abode of parties to be stated in claim, 7.
Of trial, change of, notice on summons respecting, 14.
proceedings in transferred cases, 99.

PLAINTIFF—

Changing, necessary materials, 110.
consent of new plaintiff necessary, 110, 114, 115.
Definition of word, 3.
Nonjoinder or misjoinder of, 114.

PLAN OF DISTRIBUTION—

Application to vary, 18.
Proceeds of goods sold under attachment, 18.

PLEADING—

Definition of word, 6.
Unnecessary in replevin, 40.

PLENE ADMINISTRAVIT, 56.

Effect of failure to plead, 56.
Judgment when pleaded, 56, 59.

PLURIES SUMMONS—

When to be dated, 10.

POSTAGE—

Costs in the cause, 166.

LAW LIBRARY

POSTPONED JUDGMENT—
Cause not concluded by, 147, 378.
Delivery of, 91, 378.
Rule 161 superseded, 378.

POSTPONING TRIAL—(*see* Adjournment).
Absence of a material witness, 149.
Before hearing, 149.
Where neither party appears, 154.

POWERS OF JUDGE, 132.

PRACTICE—(*see* Procedure).
Adjournment for non-compliance with, 129.
On stay of proceedings, 130, 160, 161.

PRIMARY CREDITOR—(*see* Garnishment), 41, *et seq.*

PRIMARY DEBTOR—(*see* Garnishment), 41, *et seq.*

PRINTING—
Of execution, 75.
Of notices, 124.
Of summons, 87.
Of warrants, 75.

PRIVILEGE—
From production, 155.

PROCEDURE AND PRACTICE—
Actions commenced under old rules, 1.
for flooding lands, 13.
Administration suits, 55.
Affidavit to continue proceedings after issue of *fi. fa.* lands, 380.
After death of parties, 82, 121.
Appeals in school cases, 407-410.
" cases of maintenance of wives deserted by their husbands, 410.
Barred by transcript, 77.
issue of *fi. fa.* lands, 380.
Before clerk on garnishee order of High Court, 52, 53.
Disputes between primary debtor and garnishee, 43.
Formal objection not to defeat, 123.
Irregularities, amendment and waiver of, 123.
Revival on death of parties, 80.
Transferred cases, 90-91.
Woodman's lien for wages, 411.

PROCEDURE BOOK—
Appeal under *Master and Servant Act* to be entered, 174.
Change of parties to be entered, 121.

PROCEDURE BOOK—*Continued*—
Clerk to keep, 83.
Contain name of solicitor entering claim, 94.
Cross-judgments to be entered, 83.
Entries required to be made, 84.
Form of, 84, 85, 384.
Garnishee cases from High Court to be entered, 53.
Index to, 84.
Judgments and orders to be entered, 73.
Leave to take any proceedings to be entered, 126.
Return by bailiff to be entered, 87.
Special judgments and orders to be entered, 79.
Transferred cases to be entered, 90.
Used as transcript of judgment book, 79.

PROCESS—
Action for debt, etc., 10.
replevin, 31.
securities seized by bailiff, 10.
tort, 10.
Alias or pluries, 10.
Clerk to sign and seal, 9.
Commencement of action, 10.
Definition of word, 3.
In garnishment to be entered in debt attachment book, 49.
Ordinary and special summons, 10.
when special summons warranted, 87.
Removal of, 14.
Venditioni exponas, 101.

PROCESS BOOK—
Bailiff to keep, 100.
Inspection of, by parties, 101.

PRODUCTION OF DOCUMENTS—
For inspection, 154.
notice of, 154.
privilege from, 155.

PROHIBITION—
Irregularity no ground for, 123.
Omission of notice of intention to proceed no ground for, 126.

PROMISSORY NOTES—
Action on, when seized by bailiff, 10.
For gambling debt or spirituous liquors not actionable, 122.
Need not be copied in claim, 132.

PROPERTY—
Order for preservation of, 133, 135.
Unsold for want of buyers, 101.

PROVISIONAL COUNTIES—
Courts to be held in, 136.
Provisions of law as to, 136.
Rules and forms to apply to, 136.

PUBLIC OFFICES—
Act respecting, 399.

PUBLIC SCHOOLS—
Disputes between trustees and teachers, 408.
Judgment and execution on appeal, 408.

R

RENEWAL—
Of covenant by guarantee company to be filed, 376.
fee for filing same, 377.
renewal receipt to be attached, 377.
Of executions, 82.
Of summons, 14.
Of warrant of commitment, 108.

RENT—
Landlord's claim for, 19.
Replevin after distress for, 30, 40.

REPLEVIN—
Action of, when it will lie, 28.
for another cause not to be joined with, 29.
what court to be entered in, 29.
Affidavit necessary, 29.
Application for order, judge's powers, 31.
to vary or discharge order, 38.
Bailiff's duties when executing writ, 35, 36.
return of writ, 36, 103.
to be indorsed with fees, 103.
to contain names of sureties, 36.
Claim in, 29.
Concealment of goods, powers of bailiff, 35, 36.
Copy of writ to be served, 37.
Counterclaim in nature of, 66.

REPLEVIN—*Continued*—

Damages to defendant when plaintiff fails, 34.
without assessment not to exceed $200, 39.
Defence in, 38.
notice of how and when to be given, 38.
default of, 39.
Distress for rent, procedure, 40.
damage feasant, procedure, 41.
Eloignment of goods, return of, 36.
writ of withernam to issue on, 37.
Grounds for issue of order, 29.
Goods in bailiff's hands not liable to, 28.
Judgment in, 41.
by default, 38.
Jurisdiction of court in, 28.
Order may issue *ex parte* or on notice, 31.
when writ issued without order, 34.
Payment into court for damages, 39.
Pleading unnecessary in, 40.
Service, summons not to be served until goods replevied, 37.
inability to effect, 38.
Successful defendant may recover costs as between solicitor and client, 34.
Summons to show property and value, 31.
when to issue, 29.

Bond In, 32, 34.

Bailiffs to take, 32, 34.
Cancelled, discontinues action, 40.
Direction for, 31.
Names of sureties to be given in return to writ, 36.
Practice in action on, 32.
Report as to sureties to be made by clerk to judge, 98.
Requisites of, 32.
Subject to provisions of Imperial Act, 32.
Text of Imperial Act, 32-34.
When delivered up to be cancelled action to be discontinued, 40.

Jury In—

If goods exceed $20.00 in value, 40.

RESIDENCE OF PARTIES—

Defendants out of province no bar to action, 387.
Defendants out of province, garnishment cases, 388.
service on, 289.
Defined, 7.
Statement in claim of, 7.

RETURNS—
By bailiffs to clerk of executions to be made in 30 days, 101.
sale abortive, 101.
statement of fees to be indorsed, 102.
at each sittings of court, 104.
to be filed by clerk, 105,
to be laid before judge at each court, 104.
memo. endorsed, 105.
By bailiffs to inspector of fees, 85.
of summons, 11.
served out of province, 380.
in replevin, 36.
not served in time for court, 103.
of foreign summons to be made to issuing clerk, 73.
By clerk to county attorney of unclaimed moneys, 98.
inspector of committals, 99.
of yearly fees, 85, 97.
By clerks in cities to Lieutenant-Governor of fees, 86.
to Lieutenant-Governor of yearly business, 86, 401.
to Provincial Treasurer of fees, 97.
By sheriff to clerk of execution against lands, 380.
under *Creditors' Relief Act*, 76.

Of Executions—
Of property on hand for want of buyers, 101.
To be endorsed with statement of fees, 103.
To be made within 30 days, 101.
When sale abortive, 101.

REVIVOR—
After six years, 80, 82.
After change of parties by death, 80, 81, 82.
Against future assets, 80.
executor *de son tort* of defendant, 6.
joint stock company, 80.
wife or husband of plaintiff, 80.
Before judgment on special summons after one month from right accruing, 72.

RULES—
Came in force 1st July, 1894, 1.
High Court rules as to interpleader, 395.
No. 161 superseded, 378.
Non-compliance with not to render proceeding void, 123.
Repeal of old, 1.
To apply to provisional municipalities, 136.
To govern all proceedings, 1.

S

SALE—

Bailiff's, of perishable goods, 17, 26.

SAMPLES—

Of goods for evidence, 133.

SATISFACTION OF JUDGMENT—

Party making, may require entry of, 132.

SCHEDULES—(*See* Index to Forms).

Of clerks' fees, 185, 192, 385.
Of bailiffs' fees, 188.
Of appraisers' fees, 192.
Of witness' fees, 191.

SCHEME OF DISTRIBUTION—

Of moneys realized on attachment, 18.

SCHOOLS—

Act respecting Separate, 407.
Public—Act respecting, 408.
Appeals from Division Courts under, 408.
High—Act consolidating Act respecting, 410.

SECURITY COVENANT—

Definition of word, 4.

SECURITY FOR COSTS—

Interpleader cases, 23, 25.
Order for, when granted, 161.
Stay of proceedings pending, 161.

SECURITIES FOR MONEY—

Seized by bailiff, action on, 10.

SEIZURE—

Damages for, in interpleader, 22.
Incumbered goods, 23.
Liquor near public works, 401.
Perishable goods, 17, 26.

SEPARATE ESTATE, 145.

Allegation in claim necessary, 145.
Judgment against, form of, 146.

SEPARATE SCHOOLS—

Disputes between trustees and teachers, 407.
Judgment and execution on appeal, 407.

LAW SOCIETY LAW LIBRARY

SERVICE—

Added defendant to be served, 116.
Affidavit of service in foreign country, 389.
Affidavit of mileage to be made by bailiff, 90.
By mail, 124.
Defendant in foreign division, 12.
Duties of bailiff as to, 100.
Fees of, allowed only to bailiff, 75.
Foreign corporation, firm, or individual, 13.
Foreigner in foreign country, 13, 387, 389.
Garnishee summons, 44.
judge may dispense with personal service, 45.
Interpleader summons, 19, 23.
Judgment debtor's summons, 104, 390.
Judgment summons, 107, 390.
Must be by bailiff, 75.
Must be effected ten or fifteen days before court, 104.
Notice of motion for judgment to be served on defendant, 75.
Order adding parties, 120.
Ordinary summons, 12, 13, 88, 100, 104.
Papers on application for new trial, 96, 150.
Process from foreign, 88, 104, 159.
Replevin summons, 37, 38.
to be served after goods have been replevied, 38.
Substitutional, when allowed, 12, 389.
in garnishment, 45.
in replevin, 38.
Too late for warning as to sittings of court to apply, 103.
When not made in time, summons to be returned to clerk, 103.
Where there are defendants having separate interests, 12.

SETTING ASIDE—

Application may be *viva voce* at trial, 130.
Stay of proceedings, 126.

SET-OFF—(*see* Counterclaim).

By attaching creditors when several attachments issued, 16.
Judgment for defendant when balance found in his favor, 65.
Notice may be given admitting part, 63.
Notice of, how given, 68.
to be deemed notice of defence, 64.
Proceedings on, when several defendants, some not served, 111.
Rights of defendant on judgment for, 74.
Suit against only one of two parties, 149.
Trial of, after original action concluded, 66.

SETTLEMENT OF ACTION—

On arrest under warrant of commitment, 109.
To be made with clerk, 106.
Where judgment payable, 73.

SEVERAL DEFENDANTS—

Concurrent writs for, in different counties, 11.
Judgment by default against some only, 70.
summons served on different days, 71.
on confession of some defendants, 70.
when all not served, 69.
Striking out those not served, 111.

SHAREHOLDERS—(*see* Joint Stock Companies).

Judgment and execution against, 80, 81.

SHEEP—

Act respecting protection of, 169.

SHERIFF—

To act on execution against lands, 379.
To make return of same to clerk, 380.
Proof of title on deed by, 384, 415.

SOLICITOR—

Entitled to moneys received by clerk in suit, 94.

SPECIAL JUDGMENTS—

Appeal under *Ditches and Watercourses Act*, 181.
Clerk to prepare and enter, 79.
Motion to settle, 79.
What are, 79.

SPECIAL SUMMONS—

Against married women, 146.
Copy of claim to be annexed to, 87.
Costs of ordinary summons when special summons warranted, 87.
Issue of, when warranted, unless otherwise ordered, 87.
in action on securities seized by bailiff, 10.
In actions for debtor or money demand, 10.
Judgments on (*see* Judgment), 69-73.
Return day of, 11,
Service of (*see* Service), 12, 13, 88, 100, 104.
not in time for warnings to apply, 104.
Where issued instead of ordinary summons, and *vice versa*, 15.

SPIRITUOUS LIQUORS—

Promissory note for, cannot be sued in Division Court, 122.

STATEMENT—
Of costs to be furnished by clerk, 97.
On summons issued from court nearest defendant's residence, 8.

STATUTE OF LIMITATIONS—
Defence of (*see* Statutory Defence), 64, 68.
Effect of, where defendant substituted, 113.
In garnishee proceedings, 50.
On renewal of writ, the original available to prevent operation of, 14, 15.

STATUTORY DEFENCE—
In garnishee proceedings, 50.
Notice of, equivalent to dispute notice, 64.
Notices in cases of, 68, 92, 95.

STAY OF PROCEEDINGS—
Action pending in another court, 148.
Appeals in judicial districts, 140.
Effect of, where defendant substituted, 113.
In what cases judge may grant stay, 160.
For security for costs, 16.
Practice as to, 130.
Setting aside for cause shown, 126.

STIPENDIARY MAGISTRATE—
Acts as judge in judicial districts, 137.
Appeal from, 140.
May refer matter to arbitration, 139.

STYLE OF CAUSE—
After change of parties, 121.
In affidavits must be in full, 142.

SUB-CONTRACTORS—
Act respecting enforcement of rights of, 404.

SUBPŒNAS—
Appeal from Court of Revision, 174.
under *Ditches and Watercourses Act*, 181.
Line Fences Act, 178.
Master and Servant Act, 176.

SUBSTITUTIONAL SERVICE (*see* Service), 12.
Garnishee cases, 45.
Replevin cases, 37, 38.

SUBSTITUTING PARTIES (*see* Amendment), 110, *et seq.*
By notice, 118.

SUITORS' MONEYS—
Clerk to give notice of receipt of, 93.
Not to be withheld under any pretence, 93.
Payment by clerk of, 128.
Unclaimed, return of, 98.
(*See* Clerk and Bailiff.)

SUMMONS—
Action for tort, 11.
in adjoining division, 10.
on securities seized by bailiff, 11.
for flooding lands, 13.
against married woman, 146.
Added defendant, 116, 120.
Alias or pluries, 10.
Amendment, special issued by mistake for ordinary, 11.
Against judgment debtor, 107.
Clerk to file, when entering judgment, 91.
Concurrent, for defendant in different counties, 11.
Copy of claim to be annexed, 87.
Examination of judgment debtor, 107.
Garnishment, 44.
Interpleader, 19.
Life of, 14.
Notice as to change of venue, 14.
Printing of, 87.
Renewal of, 14.
Return of, 11.
Replevin, 28.
property and value to be shown, 31.
return of, 36, 37.
service of, 37, 38.
Service of, 12, 13, 23, 37, 88, 100, 104.
bailiff's duties, 100.
in adjoining division, 23.
on foreign corporation, firm, or individual, 13.
in garnishment cases in interpleader, 13.
in replevin, 37.
special summons, 87.
substitutionally, 12, 38, 45.
too late for warnings to apply, 103, 104.
Warnings on (*see* Warnings), 10, 14, 44, 104.

SUMMARY APPLICATIONS—
Before judge in chambers, 129.
at trial, 130.
How made, 129.

SURETIES—
Clerk to report to judge at every court, 98.
When covenant renewable periodically renewal receipt to be filed, 376.

SURVEY—
Of subject-matter of action, order for, 133.

SURVIVAL OF ACTION—
Cases in which action survives, 117.

SURVIVOR—
Rights of, on death of one or more plaintiffs, 82.

T

TARIFF OF FEES—(*see* Index of Forms), 185, *et seq.*
Claim under $10.00, 386.
Of appraiser, 192.
Of officers, 185, 188, 192, 385, 387.
Of witness, 191.

TAXATION OF COSTS, 97.

TAX ON DOGS ACT, 169.
Appeals under, 171.

TEMPORARY JUDICIAL DISTRICTS—
Jurisdiction in, 138.
Provisions respecting, 137.
Stipendiary magistrate to act as judge, 137.

TENDER—(*see* Payment into Court), 126.
Clerk to notify plaintiff of plea of, 96.
Costs of defendant may be deducted from money paid in, 95.
Money paid in on plea of, to be retained until acceptance or judgment, 95.
Plea of, equivalent to dispute notice, 64.
Procedure after payment into court, 126, 127.
Procedure as to payment into court, 128.
Subject-matter of action in detinue, 127.

TERRITORIAL DISTRICTS—
Provisions as to, 136.
Rules to apply to, 136.

THIRD PARTY—
Addition of, at or before trial, 119.
In garnishment, 42, 45.
Is not a defendant, 6.
Order and summons to, 116.

TIME—

For irregularity to be remedied, judge may adjourn, 129.
Of operation of rules (1st July, 1894), 1.

TIPPLING DEBT—

No jurisdiction for, 122.

TITLE—

Notice of change of, 48.
Not to abate action, but same to be removed to High Court by certiorari, 390, 391.
Under sheriff's deed, 383.

TORT—

Ordinary summons to issue, 10.

TRANSCRIPT OF JUDGMENT—

Bars future proceedings, 77.
Barred by abatement of action, 78.
Entry of, in procedure book, 77-79.
How to be prepared, 78.
Issue prohibited until fourteen days after trial, 78.
Payment of money made under, 129.
To County Court abolished, 378.

TRANSCRIPT OF JUDGMENT BOOK—

Procedure book to be used for, 79.

TRANSFER—

From another Division Court, 90, 91.
District Court in woodman's lien cases, 414.
Proceedings in, 90, 91.
Title to land, validity of devise, Act not to abate suit, but same to be transferred to High Court, 390, 391.
To High Court, 99, 390.

TREASURER OF ONTARIO—

Copy of clerk's return to be sent to, 97.
To receive proportion of annual fees, 77.

TRIAL—

Adjournment for non-compliance with practice, 129.
Application for new (*see* New Trial), 150.
Attachment action (*see* Absconding Debtor), 16.
By jury, 90.
Change of place of, notice on summons as to, 12.
Change of parties at time of, 111.
Clerk to prepare list of cases, 89.
Costs to be taxed on day of, 97.

LAW SOCIETY LAW LIBRARY

TRIAL—*Continued*—
Evidence in writing for use on application for new trial, 96.
Judgment delivered concludes trial, 378.
Judgment reserved does not conclude action, 147.
Line fence appeals, 177.
List of cases for, 89.
alteration of order, 89.
Non-suit by judge in jury cases, 147.
Putting off, before day of, 149.
Procedure where action pending in other courts for same cause, 148.
Representative of dead plaintiff should appear at, 121.
Summary application at, 130.

TRIAL LISTS—
Requisites of, 90.
To be prepared by clerk, 89, 90.

TRUSTEES—
May act without joining persons beneficially interested, 60, 61.
Representative capacity, 61.

TRUST FUND—
Cestui que trust may protect from garnishment, 42.
Trustees may sue without joining *cestuis que trustent* (*see* Executors), 60.

U

UNAUTHORIZED FORMS—
Not to be used, 125.
Old forms may be continued if judge approves, 125.

UNCLAIMED MONEYS—
List to be sent to county attorney, 98.

UNDERTAKING FOR COSTS—
By next friend of infant, 122.

V

VENDITIONI EXPONAS—
Writ of, 101.

VENUE—
In interpleader cases, 23.
Notice on summons as to change of, 14.
Practice as to change of, 90, 91.

W

WAGES—
Consolidation of actions for, 405.
Infant may sue for, 122.
Lien for mechanic's, 404, *et seq.*
woodman's, 411, *et seq.*
Master and servant appeals, 168.
Of unmarried persons not exempt from garnishment, 391.
Order of magistrate subject to appeal, 407.
may be filed in Division Court, 407.
Powers of city police magistrate, 406.
Precedence in attachment, 19.
Procedure in claim for, 404.
Time for payment, on order of magistrate, 406.

WAGE-EARNERS—
Act respecting enforcement of rights of, 404.

WARNINGS—(*see* Index of Forms).
As to change of venue, 14.
next courts, 104.
On garnishee order, 44.
On special summons, 10, 104.

WARRANTS—
Of commitment, bailiff's duties when executing, 102.
Life of, 108.
Printing of, 75.
Payment when arrested under, 109.
Renewal of, 108.
Requisites of, 108.

WATERCOURSES—
Appeals under Act respecting, 179.

WITHERNAM—
Writ of, when goods replevied have been eloigned, 37.

WITNESSES—
Absence of, ground for adjournment, 149.
Affidavit of disbursements to, 158.
Clerk to tax fees of, 158.
Conduct money (*see* Index to Forms), 191.
to professional men, 159, 191.
Statutory provisions respecting, 159.
Subpœnas on appeal under *Consolidated Assessment Act*, 174.
Ditches and Watercourses Act, 181.
Line Fences Act, 178.
Master and Servant Act, 176.
Tariff of fees to, 191.

WIVES—(*See* Married Women).
Appeal from magistrate's order for maintenance, 410.

WOODMAN'S LIEN FOR WAGES—
Attachment and execution, 412.
In what court procedure to be, 414.
Practice, 411.
Procedure to enforce, 411, *et seq.*
Transfer from District Court, 414.

WORKMEN'S COMPENSATION FOR INJURIES ACT—
Assessors appointed by court, 414.

WORDS, INTERPRETATION OF—
Accord, 132.
"The Act," 2.
Action, 6.
Administrator, 2.
Affirmed, 2.
Agent, 2.
Bailiff, 3.
Cause, 6.
Clerk, 3.
Claim, 3.
Clear days, 4.
Contested case, 156, 157.
County, 3.
Court, 3.
Declared, 2.
Defendant, 3.
Devastavit, 54.
Executor, 2, 5.
"Executor *de son tort*," 5.
Folio, 5.
Foreign court, 3.
Foreign division, 3.
Goods, chattels, property, 4.
Home court, 3.
Home division, 3.
Interpretation Act of Ontario applied, 5.
Judge, 3.
Judgment, 4.
Judicature Act to apply, 5.
Masculine to include feminine, 2.
Matter, 6.
Note of hand, 122.
Oath, 2.

WORDS, INTERPRETATION OF—*Continued*—

Order, 4.
Party, 2, 5.
Person, 2, 5.
Petitioner, 3.
Plaintiff, 3.
Pleading, 6.
Process, 3.
Satisfaction, 132.
Security covenant, 4.
Singular number includes plural, 2.
Sworn, 4.
United counties, 3.

WRIT—

Of execution (*see* Execution),
Of replevin (*see* Replevin), 37.
On summons (*see* Summons), issue of, 9, 10.

Printed by THE BRYANT PRESS Printers, Toronto.

OSGOODE HALL LAW LIBRARY